

# **INDUSTRIAL DISPUTES TRIBUNAL**

**Dispute No.: IDT 36/2019**

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## **SETTLEMENT OF DISPUTE**

**BETWEEN**

**UC RUSAL ALUMINA JAMAICA LIMITED**

**AND**

**UNION OF CLERICAL, ADMINISTRATIVE &  
SUPERVISORY EMPLOYEES**

***AWARD***

### **I.D.T. DIVISION**

<b>MR. ERROL MILLER, J.P.</b>	<b>-</b>	<b>CHAIRMAN</b>
<b>MR. ERROL BECKFORD</b>	<b>-</b>	<b>MEMBER</b>
<b>MR. CLINTON LEWIS</b>	<b>-</b>	<b>MEMBER</b>

**APRIL 11, 2022**

**IDT 36/2019**

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**UC RUSAL ALUMINA JAMAICA LIMITED  
(THE COMPANY)**

**AND**

**UNION OF CLERICAL, ADMINISTRATIVE & SUPERVISORY EMPLOYEES  
(THE UNION)**

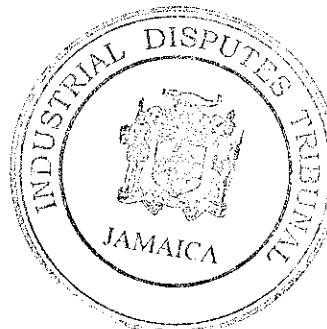
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**REFERENCE:**

By letter dated October 1, 2019, 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 UC Rusal Alumina Jamaica Limited on the one hand, and the Union of Clerical, Administrative and Supervisory Employees on the other hand, over the termination of Jefforey Grandison."***



**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 )
Mr. Clinton Lewis	-	Member, Section 8(2) (c) (iii)

**REPRESENTATIVES OF THE PARTIES:**

The **Company** was represented by:

Ms. Kelley Wong	-	Attorney-at-Law
Mr. Mikhail Jackson	-	Attorney-at-Law
Mr. Glendon Johnson	-	Director, Human Resources

The **Union** was represented by:

Mr. Vincent Morrison	-	President
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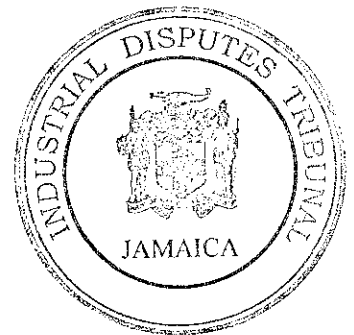
**In attendance:**

Mr. Garth Cheese	-	Chief delegate
Mr. Michael Moore	-	Section Delegate
Mr. Jefforey Grandison	-	Aggrieved Worker

**SUBMISSIONS AND SITTINGS:**

The original division selected to hear the dispute comprised:

Mr. Charles Jones	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2) (c) (ii)
Mr. Fredrick Evans	-	Member, Section 8(2) (c) (iii)



Mr. Rudyard Spencer was later selected to chair the division, but he became incapacitated and subsequent to the 2<sup>nd</sup> Sitting, Mr. Errol Miller JP, was selected to chair the division.

In light of the change to the division of the Tribunal, the matter begun *de novo* in accordance with Section 8(4) of the Act. Mr. Fredrick Evans' contract later expired, and he was replaced by Mr. Clinton Lewis, however, the parties agreed to have the matter continued as if not interrupted.

Briefs were submitted by both parties and oral and written presentations made during sixteen (16) sittings held from November 30, 2020, to November 18, 2021.

**BACKGROUND TO THE DISPUTE:**

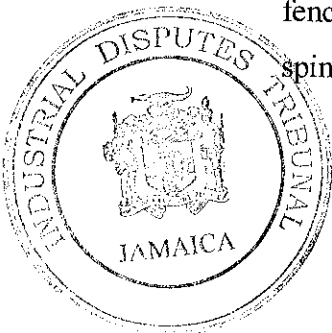
UC Rusal Alumina Jamaica Limited (the Company, UC Rusal) is a company incorporated in Jamaica with its principal activity being the mining and refining of bauxite ore into alumina. Raw material and alumina are shipped through the Company's port facility located at Port Esquivel in Old Harbour, Saint Catherine.

The Union of Clerical, Administrative and Supervisory Employees (UCASE, the Union) is a registered Trade Union under the Trade Union Act which has representational rights for certain categories of workers employed by the Company.

Mr. Jefforey Grandison was employed to UC Rusal Alumina Jamaica Ltd, Port Esquivel Division in the capacity of Railcar Service Man in June 2010. Prior to that date he served the alumina industry for over twenty five years. On May 24, 2018, at approximately 11:30am, he was proceeding towards the main entrance when it is alleged that he threw a bundle wrapped in coloured cloth about 15-20 metres into trees to the left of the main gate. The following day he was told by his supervisor that a security personnel would like to see him. He went to the security personnel and was told that he was seen throwing something over the fence. After several meetings between the Union and the Company Mr. Grandison was subsequently suspended and eventually his employment was terminated by letter dated June 15, 2018, for attempting to remove a paint roller from the Port Esquivel compound without authorization.

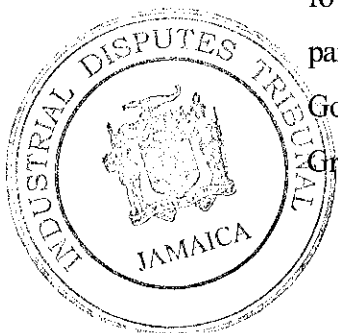
**THE COMPANY'S CASE:**

1. UC Rusal Alumina Jamaica Limited submitted that Mr. Jefforey Grandison was seen by its Senior Resource Protection Officer, Mr. Clive Gordon, throwing an item across the fence to the staff car park. It was subsequently discovered that the item was a painting spindle roller, property of the Company. By letter dated June 15, 2018, Mr. Grandison

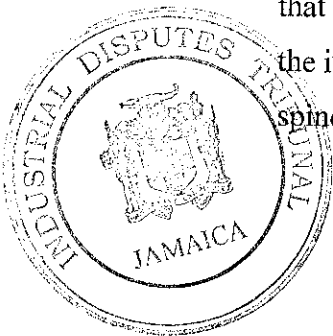


was dismissed for attempting to remove the Company's property without permission. This dismissal took place twenty one days before the expiration of his fixed term contract.

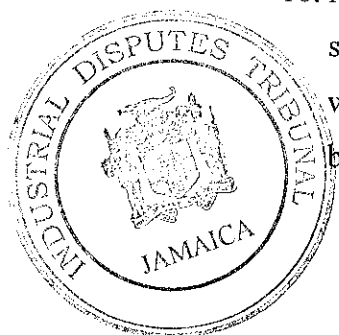
2. Mr. Clive Gordon was called as UC Rusal's first witness. He testified that he has been a Senior Resource Protection Officer with the Company for approximately six years and that his prior employment was as an Immigration Officer at the Passport, Immigration and Citizenship Agency where he served for ten years.
3. He stated that on May 24, 2018, at about 11:25am while on duty on the 7:00 a.m. to 3:00 p.m. shift, he was driving the Company's bus from the Pier along Palm Road to the security office. On reaching the vicinity of the Scale House, Old Contractor and MRS Locker Rooms, he noticed that Mr. Jefforey Grandison was sitting on a bicycle with both feet on the ground. The bicycle was between the Contractor Locker Room and the MRS Locker Room, in close proximity to the perimeter fence which borders the staff car park.
4. Mr. Gordon said that he was about 25 feet away from Mr. Grandison and in clear view. He said that he saw Mr. Grandison, who was facing the staff car park, with his back turned to him, ***"throw a piece of item, which was covered with a piece of blue cloth, over the perimeter fence, which fell through the tree branches and landed on the ground inside the Staff Car Park. My eyes were fixed on Mr. Grandison and the item when he turned around and saw me"***.
5. Mr. Gordon said that he went to the main gate, was searched by the security guard and then proceeded to the Staff Car Park ***"to check what had been thrown over the fence"***. Shortly after arriving at the car park, he noticed that Mr. Grandison, along with another employee, Mr. Paul Bhoorasingh, entered the car park.
6. He said that he did not say anything to Mr. Grandison but proceeded towards the area where the bundle had fallen to check on it. He further said that when he unwrapped it, he found a brand-new painting roller spindle. Mr. Grandison, who had seen him enter the car park, had by then driven out in his personal motor vehicle along with his coworker. Mr. Gordon said he did not say anything to Mr. Grandison as he did not know how Mr. Grandison would have reacted and he didn't want any confrontation.



7. Mr. Gordon said that he photographed the item and took it to the main store where it was confirmed that it was similar to other spindles which the Company had acquired for the Caustic Tank Anti-Corrosion Paint Project. He reported the matter in writing to the Resource Protection Coordinator, following which, an investigation was launched.
8. A disciplinary hearing was held by the Company on June 5, 2018, into the matter, which he attended and was questioned about the statement that he had submitted to his supervisor. He further testified that all the participants attending the disciplinary hearing visited the location where the incident took place.
9. Mr. Gordon said that the Resource Protection Office, which is in the immediate area where the incident took place, is fitted with monitors showing feeds from cameras located at different points on the compound. He said that contrary to the Union's assertion, there was no video evidence to show that Mr. Grandison threw the spindle over the fence as the camera located on the fence to the car park had not been in operation for quite some time. He said a video was shown with Mr. Grandison riding a bicycle going into the area toward the security office, but it did not show Mr. Grandison being in possession of the blue bundle.
10. Mr. Hylton Pinnock, Corporate Resource Protection Administrator, employed with the Company for twenty four years, also gave evidence for the Company. He said that among his responsibilities, is to ensure that there are appropriate and adequate security measures in place to protect all company assets. He is also responsible for conducting security investigations of employees' misconduct and to present cases at hearings on behalf of the Company.
11. Mr. Pinnock said that he was the lead investigator into the matter involving Mr. Grandison and that he also presented the evidence to the panel at the Disciplinary Hearing. He said that he presented evidence from Mr. Gordon's statement, evidence, in picture format, of the item wrapped in a blue cloth with waste material used by persons in the workshop, the spindle, which was tendered as an exhibit, as well as CCTV footage.



12. Mr. Pinnock reiterated that the object was wrapped in a blue cloth and that he showed the panel how the item (roller spindle) was found. He said that he also presented a video footage at the Disciplinary Hearing which showed Mr. Grandison riding towards the security office. He said that at 11:22:45 am, Mr. Grandison turned off to the left before reaching the Security Office and entered an area known as the Locker Room or Bathroom, which is between two buildings. The video, which lasted for 38 seconds, showed when he entered and when he left the area.
13. Mr. Pinnock testified that sometime in 2004/2005, a camera was placed on a light pole on the car park compound but that it had stopped working for a number of years prior to the incident and was no longer connected to the system. He said the car park is not considered a high-risk area and so there was no need to replace the camera. He further stated that even if the camera was working, Mr. Grandison would have been out of its range as he would have been between the two buildings. He said that although the Union claimed that the camera had been removed, it was still on the pole, but it was not connected.
14. Mr. Pinnock said that the Union was insisting that the Company should provide video evidence of Mr. Grandison throwing the spindle over the fence and that it was not satisfied when told that the camera was not working. He said that the Disciplinary Panel enquiring into the matter, together with representatives of the Union and the Company, visited the *locus in quo*. The visit was for two reasons, which is to test Mr. Grandison's theory/defense that he did not throw the spindle over the fence and to show that the camera in the car park was not working.
15. Mr. Pinnock described the entrances to the Locker Room. He said there were two entrances on one side (the front) and one to the rear (the side to the Staff Car Park), that is the entrance Mr. Grandison claimed to have used.
16. Mr. Pinnock said that when the group visited the location, Mr. Grandison was asked to show exactly where he parked the bicycle. He testified that the group decided to do a walkthrough of the area, walking from the point that Mr. Grandison said he parked the bicycle to the urinal that he claimed to have used and walking back at normal pace to

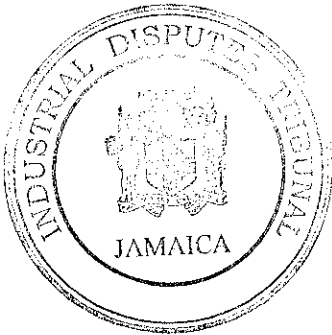


where he agreed that Mr. Gordon saw him. He said that the group took 58 seconds to do so without stopping to use the urinal. Mr. Pinnock, therefore, concluded that Mr. Grandison was lying as his, Grandison's, entry and exit, based on the video footage, took 38 seconds.

17. He said that contrary to Mr. Grandison's statement that there was no one else in the area when he visited the Locker Room, the video footage showed **'that a number of persons were at the front as well as in the bathroom and Mr. Grandison did not chose anyone as witness in an attempt to try and convince us that he actually used the bathroom'**.

18. Mr. Pinnock reiterated his closing statement at the Disciplinary Hearing:

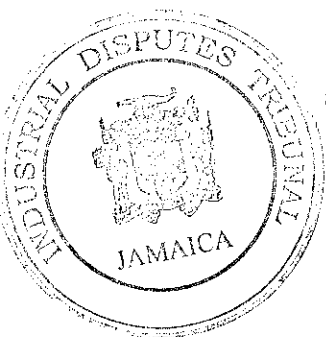
1. **On the day in question, Mr. Grandison confirmed that he actually saw Mr. Gordon and Mr. Gordon saw him;**
2. **The item was seen being thrown over the fence which belonged to the Company and was retrieved by the Security. There was no evidence to suggest that he did not, because all Mr. Grandison said was lies when one looked at the whole timing system;**
3. **The bathroom used was further away from the backdoor, yet Mr. Grandison chose to walk around the back. Therefore, Mr. Grandison had some ulterior motive why he chose to use that area;**
4. **The rules are clear and a breach was committed. The rules clearly stated that attempting to remove Company property is an offence and there was nothing to refute the evidence provided by the Security".**



19. Mr. Pinnock testified that the Company complied with the provisions of its Disciplinary Policy and Procedure (Employee Handbook) and in particular paragraph 9.4 of the Disciplinary Code which states that **"stealing or removing Company property without permission – First instance is Dismissal"**. He said that Mr. Grandison's employment contract provided that **"Your employment may be terminated forthwith by the Company without prior notice if you shall at any time: (a) commit any act of dishonesty relating to the Company, or its employees ..."**.

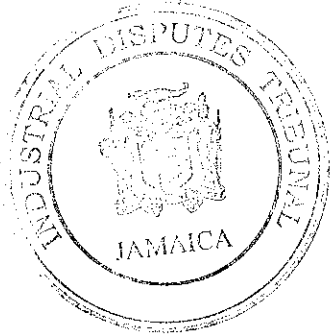


20. Mr. Pinnock further testified that he was fair and thorough in the investigation of the allegation against Mr. Grandison. He said that Mr. Grandison was allowed to present his defence which the Company sought to clarify, with an open mind, in case there was any shadow of doubt, but his defence **“that he went to use the bathroom and he didn’t throw anything over the fence”** was just not believable.
21. Mr. Lanceroy Morris also gave evidence for the Company. He has been employed for thirteen years as Manager, Employee and Community Relations. He said that he was appointed to chair the first Appeal Hearing into Mr. Grandison’s dismissal and that he was provided with all the material submitted to the Disciplinary Hearing as well as the Outcome Report.
22. He said that the Union did not bring any new evidence to the Appeal Hearing but rather a number of points of contention from the initial hearing. He said that Mr. Gordon’s failure to speak to Mr. Grandison about throwing an item over the fence was not a *“breach of procedural fairness”* and said further that the Company has established procedures to deal with such incidents. He said he believed the procedure was fair and that *“confrontations can change the imagery of an incident.”* He also testified that in balancing the statements of Mr. Gordon and Mr. Grandison, the statement of Mr. Gordon was more believable because of the supporting evidence including the video footage and Mr. Grandison’s own account of the matter.
23. Mr. Glendon Johnson was also called as a witness for the Company. He said that he has been employed to the industry for over twenty seven years and is currently the Director, Human Resources for UC Rusal Alumina Jamaica Ltd. He said that his responsibility includes ensuring that employee relations, compensation, human resource planning and development, health, community and corporate relations are managed to achieve the highest performance aligning with the Company’s strategic objective.
24. Mr. Johnson said that he was quite familiar with the matter since it begun. He testified that the Union did not find the decision of the first appeal to be acceptable and sought a second appeal. In addition to the appeal, it also sought to visit the locus for a second time.



This was agreed and the second appeal hearing began at the Locker Room. He said that at the time, he had formed the impression that the Union had good grounds for the appeal and that it was prepared to submit additional evidence to show that Mr. Grandison's dismissal was not justified. Mr. Johnson said that based on his review of the Minutes there was no new evidence. He outlined that the main submissions made by the Union were,

- a. The allegations made against Mr. Grandison were falsified;
- b. Mr. Grandison stated that he parked his bicycle and went to use the bathroom;
- c. If nature called, then nobody should put a time span on it;
- d. The camera did not pick up Mr. Grandison throwing anything over the fence;
- e. If Mr. Grandison had thrown the object over the fence, it would have stuck in the trees; and
- f. Mr. Grandison, knowing that the camera was there, would not have thrown anything over the fence.



25. The Company contends that on a fully objective view of all the circumstances of this case, no reasonable observer would conclude that the decision to terminate Mr. Grandison's contract of employment was unjustifiable. It said that his conduct warranted dismissal and that in all the circumstances of the case, the Company adopted a fair procedure.

#### **THE UNION'S CASE:**

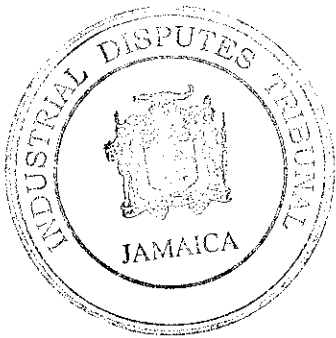
26. Mr. Grandison was employed to UC Rusal Alumina Jamaica Ltd, Port Esquivel Division in the capacity of Railcar Service Man in June 2010. Prior to that date he served the alumina industry for over twenty five years. On May 24, 2018, at approximately 11:30am, he was proceeding towards the main entrance when it is alleged that he threw a bundle wrapped in coloured cloth about 15-20 metres into trees to the left of the main gate.
27. It said that Mr. Grandison went for lunch, returned to the compound and continued his duties and on the following day he was advised that a security personnel would like to see him. When he went to the security personnel, he was told that he was seen throwing something over the fence. After several meetings between the Union and the Company, Mr. Grandison was subsequently suspended and eventually dismissed by letter dated June

15, 2018, for attempting to remove a paint roller from the Port Esquivel compound without authorization. Mr. Grandison has consistently denied the allegations.

28. Several meetings were held with a view to resolving the issue, however, it said that the Company remains intransigent in its position to terminate the services of Mr. Grandison. The Union maintains that the Company has consistently failed to provide evidence to substantiate its case of theft by Mr. Grandison.

29. The Union therefore listed the following contentions:

- a. The Company has not provided any proof to substantiate the allegation;
- b. The Company had cameras from the Resource Protection Division (RPD) which could have assisted the parties to resolve the matter. However, the Company removed the cameras and refused to show the action at the time and date in question, of Mr. Grandison throwing the bundle over the fence;
- c. Why was the camera removed and not used to assist the parties to establish the Company's case during the several meetings held both at the local and conciliatory levels?
- d. If Mr. Grandison threw the item over the fence, why was the camera removed and why was the footage not shown at the enquiry?
- e. The action of the Company in finding Mr. Grandison guilty, without any evidence or proof, is wrongful.



30. The Union submitted that in matters of this sort it is absolutely necessary to have the case properly investigated, utilizing all the information, including technology to ensure that employees not only obtain a fair trial, but that fairness, justice and Natural Justice is afforded to employees. In support of its contentions, the Union called three witnesses to give evidence.

31. Mr. Garth Cheese, Chief Union Delegate, was the first witness. Mr. Cheese said that he has been employed since 1989 to WINDALCO as an Equipment Operator and is currently the Chief Union Delegate for the Hourly Paid Production Workers employed to UC Rusal. Mr. Cheese said that among his duties as Chief Delegate, was to see that the orders of the

Labour Relations Code are carried out and the maintenance of stability between management and workers.

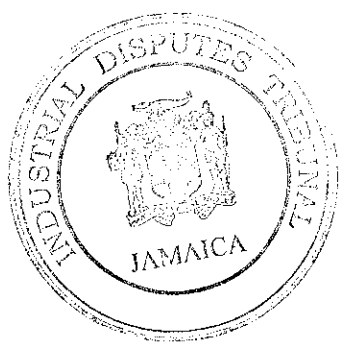
32. He testified that he was directly involved in the case of Mr. Grandison's dismissal since the first Appeal Hearing. He said that he asked for all the evidence and all the Minutes of what took place in preparation for the appeal. Mr. Cheese said he viewed a videotape which showed Mr. Grandison riding the bicycle and the security vehicle driving up behind him and when he came off the road and turned to where the bathroom is located. It did not show him going into the bathroom nor did it show Mr. Grandison throwing anything over the fence. He said that if any object was on the bicycle while he was riding on Palm Road, **"you could have identified it clearly"**.

33. Mr. Cheese said that the video footage was shown to the Union once in the continued investigation, that it disappeared after the first Appeal Hearing and they never saw it again. They were promised a copy but it never happened.

34. Mr. Cheese, in his evidence, indicated that the Union had complained about the ill treatment of workers by members of the Resource Protection Department. This was supported by an email dated May 8, 2018, that he sent to Mr. Glendon Johnson just about two weeks prior to the incident with Mr. Grandison. The following is an extract from the email:

*We also believe that these RPD securities should undergo a certain level of anger management training and be taught that if people were criminals in the first place they would not have been employed by the Company. If the Company does not act with urgency in dealing with this matter, then the Union and workers should not (sic) be held responsible for whatever is taken to protect the workers from further intimidation/harassment and embarrassment caused by an agent of the Company.*

35. Mr. Nevilton Nelson, the second witness for the Union, said that he has been employed to the Port Esquivel operations for over twenty years. He is currently a Train Operator Grade



1 and a Union Delegate. He said that he participated into all stages of the enquiry into the dismissal of Mr. Grandison.

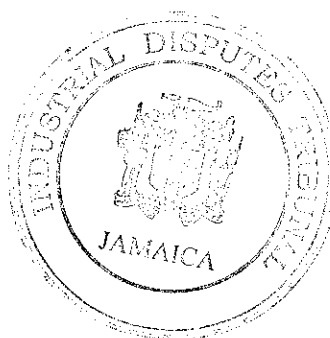
36. Mr. Nelson said that the spindle that was shown at the Disciplinary Hearing was a used spindle with paint residue and he understood **“that the roller couldn’t have been a new roller, it was already being used”**.

37. He said that he was one of the persons who requested video evidence that would show Mr. Grandison throwing the spindle over the fence but none was produced. Mr. Nelson further testified that:

*Coming up Palm Avenue, there is a camera pointing directly at any individual coming up Palm Avenue – as far as I understand it, cameras have zoom capacities, meaning that if an ants is on the ground the camera has the capability to bring it into plain focus, added to that, cameras have wide angle view – if it is that based on an accusation that Grandison throw away anything over the fence, the camera would have picked it up – but there was no such evidence.*

38. Mr. Nelson gave evidence that the cameras are installed in such a way that they could give a wide view of things that are happening and that if Mr. Grandison had thrown anything over the fence or if the spindle was in the carrier on the bicycle, they would have been captured by the camera. He said that the argument about a camera being at the fence to the car park led persons at the Disciplinary Hearing to visit the RPD office where the monitors are located and where participants were shown footages of how the cameras worked. He insisted that if Mr. Grandison had thrown anything over the fence the camera would have picked it up. He said the fact that Mr. Gordon did not confront Mr. Grandison when he was seen throwing the spindle over the fence was a procedural breach.

39. Mr. Nelson said that **“Mr. Grandison denied that he threw anything over the fence therefore he did not need to carry any witness”**.



40. Mr. Jefforey Grandison, the Aggrieved Worker, also provided evidence. He testified that he worked with Alcan, Glencore and now UC Rusal as Welder/Railcar Serviceman for thirty two years and was never charged for any misdemeanor during this time.

41. He said that at the time of the alleged incident on May 24, 2018, he was assigned to the Port and that he was riding a bicycle belonging to the Company along Palm Drive, on his way for lunch; a routine that he carries out daily. He stopped at the Locker Room and went to use the urinal. There was nobody in the Locker Room. After he finished urinating, he said that **"I could always hear the pickup coming but I couldn't tell who was driving it until I went out... I went from the bathroom to the outside, retrieve the bicycle, the pickup approached and there was Mr. Gordon driving the pickup, a Security Officer"**.

42. In examination in chief Mr. Grandison said that he saw Mr. Gordon when he came out to retrieve his bicycle.

**Q: And when you came out what did you see?**

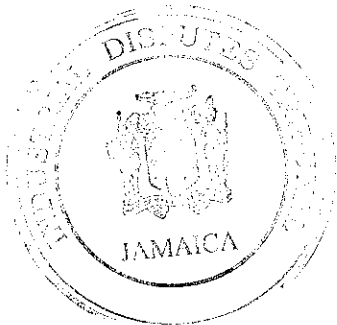
**A: The pickup passed but it slowly passed and we both looked each other in the eyes.**

**Q: So when the pickup passed, you saw Mr. Gordon?**

**A: Yes and then he drove away.**

43. He said that he parked the bicycle at the security post, went through the gate, entered the car park and drove out for lunch. He said that he did not see Mr. Gordon either when he parked the bicycle or when he went to the car park. However, despite subsequently seeing Mr. Gordon on several occasions between the 24<sup>th</sup> and 25<sup>th</sup> of May 2018, Mr. Gordon said nothing to him.

44. In his witness statement, Mr. Grandison said that it was on the 25<sup>th</sup> of May 2018 that his supervisor told him that the RPD Coordinator wanted to see him about an incident where he was allegedly seen throwing an item over the fence which was recovered by Mr. Gordon and which turned out to be a paint roller spindle.



45. He said that he attended a Disciplinary Hearing on June 5, 2018, and that during the hearing an old spindle with spotted paint was presented as an exhibit. This was despite the Company saying that a brand-new spindle was recovered from the car park. He said further that the first time he saw the brand new spindle was when it was tendered at the sitting of the Tribunal. However, he later said that a brand new spindle was shown at the meeting at the Ministry of Labour.

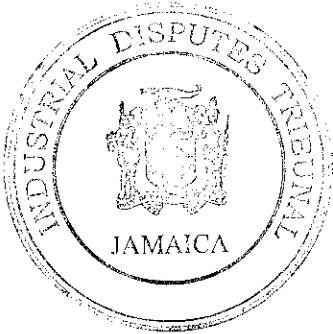
46. It is Mr. Grandison's evidence that the bicycle he was riding was fitted with a mesh and if he had the spindle in his possession, it would have been picked up on the camera while he was riding on Palm Road. The following was an exchange during his examination:

**Q: ...to the best of your knowledge, wouldn't this item be captured on the bicycle?**

**A: Yes, Mr. Morrison**

**Q: Or in your hand, could it hold in your pocket?**

**A: No sir, the camera can pick up anything, because it can zoom in and this come in very near that you can almost touch it, that's the way the camera operates. When they brought me into the room and show me myself riding the bicycle coming down, they draw it up so near that I think I could touch myself.**



47. Mr. Grandison testified that on the day of the Disciplinary Hearing, there was a visit to the security post. He said he was aware that there was a camera at the fence which was able to cover the fence line, part of the security room and the car park. However, he said that if it was not working the workers would not know.

48. When shown the email sent from Mr. Cheese to Mr. Johnson, he said that he was aware that a pattern had developed where the Resource Protection Department accused workers of a number of things and recounted certain incidents that took place between the RPD officers and workers. He related that one of those incidents resulted in a demonstration of the workers where they marched on the security post.

49. Mr. Grandison said that he was accused of throwing a paint spindle over the fence and he has consistently denied the allegation. The Union urged the Tribunal to not only find, but to award that the allegation against Mr. Grandison has not been substantiated and that he be reinstated without any infringement to his status as an employee of the Company.

**ANALYSIS OF THE EVIDENCE BY THE TRIBUNAL:**

50. Having listened to the evidence, the Tribunal must determine the following questions:

- a. Did Mr. Jefforey Grandison, by his own conduct, breach his contract of employment? and if so,
- b. Were the procedures used by the Company to terminate his services, fair?

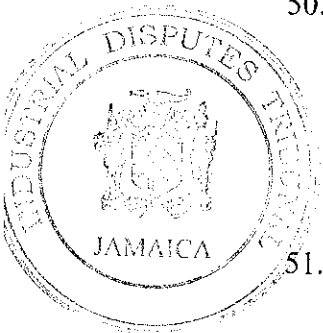
51. The Tribunal finds it most appropriate to refer to the case of *Alcoa Minerals of Jamaica vs. the Industrial Disputes Tribunal and UTASP*, in which the Court stated that:

**The objective standard is not that of a reasonable employer but of the reasonable observer having all the information and knowledge of the circumstances before the Tribunal; would such a reasonable observer think, in those circumstances, the dismissal was unjustified.**

**...In considering that, the IDT would have to consider conduct of both the employer and employee so as to determine, on a wholly objective view, whether there was any action or inaction on the part of the employee which warranted dismissal (conduct of the employee) and if so whether the proper procedure was followed in dismissing him or whether it was handled in such a way so as to attract the criticism of unfairness (conduct of the employer).**

52. Mr. Gordon said in his evidence that when he came to the vicinity of the Locker Room, he saw Mr. Grandison throw an item across the fence while sitting on the bicycle with his back turned to him. Mr. Grandison acknowledged that he was in the vicinity of the Locker Room and the Scale House and that both he and Mr. Gordon saw each other while being there.

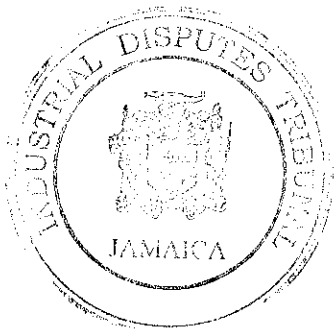
53. The Union contends that the Company had cameras which could have assisted the parties to prove that Mr. Grandison threw the spindle over the fence in order to resolve the matter,





yet the Company removed them and refused to show the action on the particular date. However, Mr. Gordon, in his evidence, pointed out that the camera that was facing the staff car park, while it is still located on the pole, has not been operational for some time. He also said that both the RPD office and the IT personnel knew that the camera had not been working. Mr. Gordon rejected the suggestion from members of the Union that the camera was working up to the day before the appeal hearing. Mr. Pinnock, in his evidence, corroborated Mr. Gordon's statement.

54. The issue of the camera became one of the focal points of Mr. Grandison's defence. For example, during cross examination, the following exchange took place with Mr. Nelson who said that he had raised the issue of video footage at the disciplinary hearing:



**Q: Where in the Minutes of the Hearing or the Appeal Hearings is that point made by you or your team that there are other cameras that would have shown other evidence?**

**Because I am going to suggest to you -- wasn't it accepted by you when the Chairman said the camera is there but is not working; wasn't that accepted?**

**A: By me?**

**Q: The team, was it not accepted -- did you object to that?**

**A: Object to what?**

**Q: To the fact that there was no video footage regarding that particular camera; was there an objection to that?**

**A: They said it, but they did not bring a concrete proof to us to show that it wasn't working.**

**Q: Did you dispute it in the Hearing?**

**A: How could we dispute it and they did not bring any evidence to us to show us, because previously I said to you they didn't show us that camera 'y', 's', 'b' or 'c' was not working, they didn't put that to us.**

**Q: But you did go to the locus, you took the visit and you saw for yourself that it wasn't working, correct?**

**(interjection)**

**A:** Yes, because I told you previously that they did point out to us that 'x', 'y' or 'z' wasn't working.

**(interjection)**

**Q:** But you accepted that it wasn't working, is that not correct?

**A:** If I accepted that it wasn't working - there was no proof to us that it wasn't working.

55. However, based on the following questions that were later asked by a Member of the Tribunal, Mr. Nelson agreed that the camera was inoperable:

**Q:** At what point in the proceedings at the locus did you realize whether or not the camera is working, that camera at the Car Park fence; at what point in the proceedings did you come to the realization whether or not that camera is working?

**A:** We had a -- what you would call a 'walkabout', a walk in the area, looking around, and seeing what was happening. It was after the 'walkabout' and we went into the Security Office, it was pointed out that the camera probably wasn't -- was inoperable.

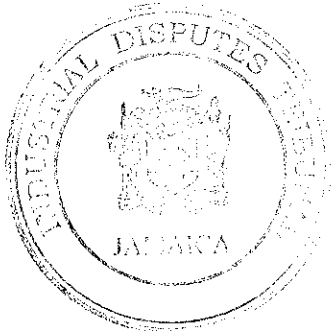
**Q:** So it was during that visit that you discovered that the camera was not working?

**A:** Right.

56. It was also noted that even if there was a working camera in place, it would not have captured Mr. Grandison throwing the spindle over the fence since at the time he was located between two buildings, and he would have been out of the range of the camera. It is therefore clear that no such evidence could have been provided.

57. Mr. Cheese was reminded of his evidence in which he said that the video footage was shown once to the Union and that a copy promised by the Company was not received. However, during cross examination, he made the following admissions, that:

- based on the Minutes, the video was shown to the Union at the Disciplinary Hearing



- he was not at the disciplinary hearing, but he was present at the Appeal Hearings where he saw the video footage and therefore his evidence that video footage was only shown to the Union once, would be inaccurate.
- he viewed the video footage in preparation for the first Appeal Hearing and that contrary to his evidence, nowhere in the Minutes was it mentioned that the Union requested a copy of the video and it was not provided.

58. The Union further lamented that Mr. Gordon did not confront Mr. Grandison when he was caught throwing the spindle across the fence. That, it contends, would have supported the Company's case. During cross examination, Mr. Gordon was asked if he did not fail in his duty to confront Mr. Grandison about throwing the item over the fence. Mr. Gordon insisted he did not, as there are rules which require that the RPD Officers should try not to be confrontational with staff members.

59. The Company contends that there was no need for Mr. Gordon to confront Mr. Grandison and referred to the evidence from Mr. Cheese to show that there had been recent tensions between the RPD Officers and some of the workers. It submitted that any confrontation by Mr. Gordon would only serve to exacerbate an already tense situation. The Tribunal accepts that in the circumstances, Mr. Gordon's action was reasonable.

60. Mr. Gordon's evidence is that after Mr. Grandison threw the item over the fence, he went to the car park to see what would happen. He was asked by a Member of the Panel if he did not think it necessary to be accompanied by one of his security officers to identify the item. In his response, Mr. Gordon said, **"As I said before and I can't change what I have said, I am not going to say that it was not necessary, but at the time it didn't happen"**.

61. The Locker Room has three entrances, and it is curious that Mr. Grandison chose to use the urinal which is much farther in the building. To get to it, he had to walk almost the entire length of the building. When asked why he took the longest route to get to the urinal, his response was that he used the easiest route since he was the one who wanted to urinate.



62. Mr. Grandison admitted under cross examination, that the video footage shown at the hearing, including the timing, was very clear. In the following extract he admitted that the walk through took a total of 56 seconds which was longer than the time he took to enter the building, use the urinal and exit the building.

**Q: And you would agree with me that based on the timing of that very clear video you were present in the area for the whole time of 38 seconds, approximately?**

**A: Yes.**

....

**Q: And you would also agree with me that during the hearing the members of the panel, as well as the Union and the Company, visited the locus?**

**A: Yes.**

....

**Q: And they did a walk through from where you said you entered and where you said you exited, correct?**

**A: Sure.**

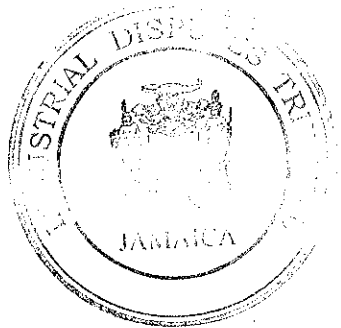
**Q: And Mr. Pinnock posited at the hearing that that walk through took a total of 56 seconds?**

**A: All right.**

**Q: Correct?**

**A: Yes**

63. While the Union on the one hand suggested that the Company should have had video footages to prove that Mr. Grandison committed the offence, Mr. Grandison, on the other hand, insisted that he saw no one in the Locker Room who could have supported his evidence. However, under cross examination, he was reminded that persons attending the Disciplinary Hearing, including Mr. Pinnock, gave evidence that based on the video footage, other persons were in the area. He was further reminded that witnesses appearing before the Tribunal on behalf of the Union, including Mr. Cheese, said that on viewing the video, they saw other persons in the Locker Room area. At the Disciplinary Hearing,



Mr. Pinnock gave evidence that **“a number of persons were at the front as well as in the bathroom and Mr. Grandison did not chose anyone as witness in an attempt to try and convince us that he actually used the bathroom”**.

64. Mr. Grandison also denied hearing the evidence from Mr. Nelson that **“Mr. Grandison denied that he threw anything over the fence therefore he did not need to carry any witness”**. He insisted that no one else was present. Given the evidence provided by witnesses both for the Union and the Company that other persons were present in the Locker Room, it seemed plausible that such witnesses could have testified whether or not they saw Mr. Grandison. Therefore, contrary to Mr. Nelson’s testimony, a witness may have assisted in substantiating Mr. Grandison’s evidence.

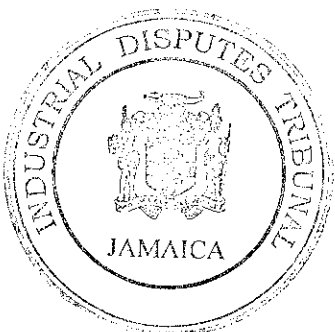
65. In general, Mr. Nelson’s evidence did not assist in supporting Mr. Grandison’s case as, too often, he failed to answer the questions directly and was involved in obfuscating the evidence during cross examination. Mr. Nelson stated that he was a Train Operator. He did not provide any evidence regarding his expertise in the operations of a camera system, despite speaking quite knowledgably about the subject. However, his theories that the camera has **“zoom capacities, meaning that if an ant is on the ground the camera has the capability to bring it into plain focus’** and **“that the cameras have wide-angled view”** that would record Mr. Grandison throwing the spindle over the fence lacked credibility.

The Tribunal also noted that he kept fumbling through the Exhibits before responding to questions and his responses were generally ambiguous.

66. Mr. Grandison’s evidence was that the spindle presented at the disciplinary hearing was old and was spotted with paint on it. During cross examination, Mr. Grandison agreed that there was no dispute over the identity of the spindle at the Appeal Hearings.

**Q: The question is that nowhere in the Minutes of the first Appeal or the second Appeal is the point being raised about the spindle being presented being an old spindle, do you agree with that statement?**

**A: Yes, I agree.**



67. Mr. Nelson was involved in the process from the Disciplinary Hearing. He also testified that the spindle was a used one but admitted during cross examination that neither he nor any other member of his team raised the issue of the state of the spindle during any of the hearings.

68. Mr. Grandison was quite evasive during cross examination. The following example makes the point:

**Q: Right. Now you see there in the closing, Mr. Pinnock stated a number of items to be considered by the panel, and on the 3<sup>rd</sup> item it states:**

*"The bathroom used was further away  
from the backdoor yet, Mr. Grandison  
chose to walk around the back. Therefore,  
Mr. Grandison has some ulterior motive  
why he chose to use that area."*

**A: Yes, that's Mr. Pinnock's speaking.**

**Q: Right. So you recalled that statement being made?**

**A: That's Mr. Pinnock's speaking.**

**Q: And would you agree with me that on the first appeal hearing you didn't address that suggestion at all at the first appeal hearing?**

**A: No, I don't agree because I didn't get a chance, Mr. Pinnock would get up and talk and deliberate.**

**Q: But you agree with me a moment ago though Mr. Pinnock was not present at the first appeal hearing, right, but I am talking about the appeal now?**

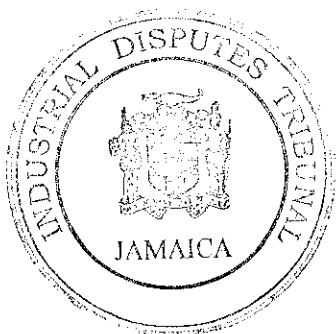
**A: Yes.**

**(interjection)**

...

**Q: Right. And what I am saying is by the first appeal hearing those points were not addressed at the first appeal hearing, you agree?**

**A: Well, they did not address it because Mr. Pinnock bullied his way through.**



**Q: But Mr. Pinnock is not present.**

**A: He is not present but people afraid of doing the right thing...**

**Q: No, but if he is not present...**

**A: Because the Chairman couldn't control him, he is uncontrollable.**

**(interjection)**

**Q: Right. But we are talking about at the first appeal now where Mr. Pinnock is not present, right?**

**A: If I agree?**

**Q: You agree that Mr. Pinnock was not at the first appeal, right?**

**A: Yes.**

69. Mr. Grandison not only evaded the questions but appeared to distort the evidence. He stated that Mr. Gordon did not provide any evidence at the Disciplinary Hearing as he was only present for "just about two minutes". He was then taken through three pages of the Minutes of the Disciplinary Hearing of June 5, 2018 where he agreed that Mr. Gordon was asked a series of questions. He then agreed that Mr. Gordon was in fact present for the hearing but began blaming Mr. Pinnock:

**A: I am sorry, but can I say something? All right. In the enquiry, whenever time a question was asked, Mr. Pinnock -- if it is asked of Mr. Gordon, Mr. Pinnock would get up and answer the question, if it was asked of me, he would get up and answer the question, and he would continue to deliberate...**

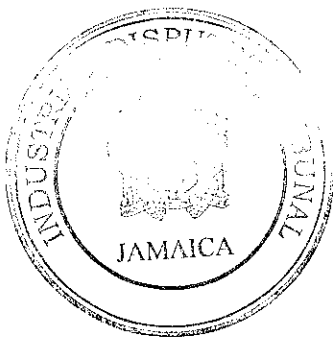
**Q: Mr. Grandison, you agree though that is not what is captured here though?**

**A: No, because the Chairman couldn't control him.**

**Q: No, but it is actually captured here where questions are put to him by various persons including the Union and he answers. It captures what he says here...**

**...**

**A: It is written in writing but he didn't answer it, because Mr. Pinnock would take it over.**



...

**Q: Mr. Grandison, the point that I am making to you is that questions were put to him by the Union, he responded and some of those responses were used in your defence to say that that could not have been true. Do you agree or not?**

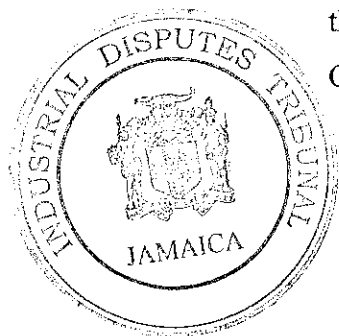
**A: I agree.**

70. Mr. Grandison, under cross examination, denied that when the team from the Disciplinary Hearing went to the Resource Protection Department's office, it was pointed out on the monitor that the camera by the car park fence was not working. He also denied that when they returned to the Disciplinary Hearing, the Chairman stated that they accepted that the camera was not working. Even after being shown the statement in the Minutes of the meeting, he said that he was hearing it for the first time. He went on to state that the decision of the panel was not communicated to him. When asked the reason for the first Appeal Hearing, he said he could not remember. Asked if he agreed that at that hearing it was revealed that the camera at the fence was removed, he said it was removed after he was accused.

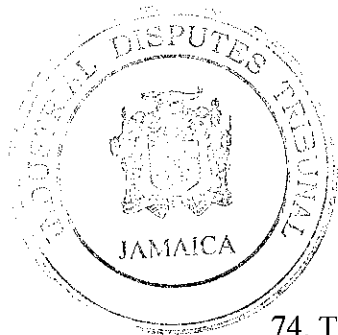
71. The Tribunal visited the locus and was shown the monitors in the security office which produced outputs captured by cameras on the compound. In viewing the output from the camera focused on Palm Avenue, it would not have been possible to recognize any item on the bicycle. The picture on the monitor became more distorted, the greater it was zoomed. Consequently, if the paint spindle was in the basket on the bicycle, it would not have been visible on the monitor.

72. Mr. Grandison's evidence was also at variance with that of his own witnesses. It was therefore difficult to accept the veracity of his evidence.

73. The second question to be determined by the Tribunal is whether the process utilized by the Company to dismiss Mr. Grandison was fair. Paragraph 22 (1) of the Labour Relations Code outlines that the disciplinary procedure should be in writing and should:







- a. **Specify who has the authority to take various forms of disciplinary action**  
.....
- 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. **Be simple and rapid in operation.**

74. The evidence is that following the incident reported by Mr. Gordon, the Company informed Mr. Grandison of the allegation, invited him to submit a statement and conducted an investigation into the matter. Mr. Grandison was advised of the facts surrounding the allegation and invited to a Disciplinary Hearing in order to answer to the charge. He was afforded the opportunity of being represented by his Union and provided with the right of appeal on two occasions to increasingly higher levels of management. The process took approximately two months which, in the circumstances, can be considered as fairly rapid.

75. The Tribunal, considering the test applied by the Court of Appeal in the case of *Village Resorts Limited v The Industrial Disputes Tribunal and Others*, asked itself whether in all the circumstances of this case, the actions of the Company were just, fair and reasonable.

76. The undisputed evidence is that Mr. Grandison was represented by the Union at all stages of this dispute. An initial investigation was carried out by the Company into the allegations against Mr. Grandison. Mr. Pinnock testified about the steps taken leading to a Disciplinary Hearing on June 5, 2018. The decision of the Disciplinary Panel was appealed. An Appeal Panel reviewed the evidence, heard the Union's submissions and upheld the findings of the Disciplinary Hearing Panel. A second appeal was made by the Union and another Appeal Panel was convened which also reviewed the evidence, heard the Union's submissions and upheld the decision of the previous Panels. It is to be noted that no new evidence was submitted by the Union during the two appeals.

77. The procedures by the Company were in keeping with the provisions of the Labour Relations Code as well as its own Handbook; the provisions of which were more generous than those of the Code. Therefore, there was no dispute regarding the procedures adopted by the Company in this matter. The dispute by the Union was that Mr. Grandison was not confronted when he was caught and that video evidence was absent to prove the Company's case.

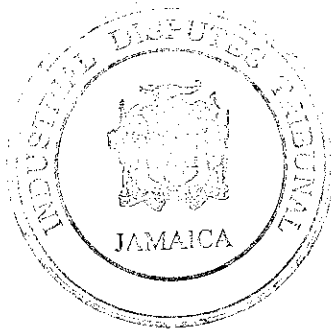
78. Despite the Union's contention that the Company presented no proof to substantiate the allegations, it presented evidence from a video footage, witness statements, eye-witness evidence and visits to the locus. Mr. Grandison failed to prove his innocence and the Company's case was more believable.

79. The Tribunal therefore finds that the process by the Company leading to the termination of Mr. Grandison's services was fair in all the circumstances.

**AWARD:**

The Tribunal finds that the termination of the services of Mr. Jefforey Grandison was justifiable.

DATED THIS 11<sup>th</sup> DAY OF APRIL 2022.



Witness:

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

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

.....  
Mr. Errol Beckford  
Member

.....  
Mr. Clinton Lewis  
Member