

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 25/2020

SETTLEMENT OF DISPUTE

BETWEEN

UC RUSAL ALUMINA JAMAICA LIMITED

AND

UNION OF CLERICAL, ADMINISTRATIVE AND

SUPERVISORY EMPLOYEES

AWARD

I.D.T. DIVISION

HON. MRS. JUSTICE MARJORIE COLE-SMITH (Ret'd.)- **CHAIRMAN**

MR. ERROL BECKFORD - **MEMBER**

MR. CLINTON LEWIS - **MEMBER**

DECEMBER 21, 2021

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

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

AND

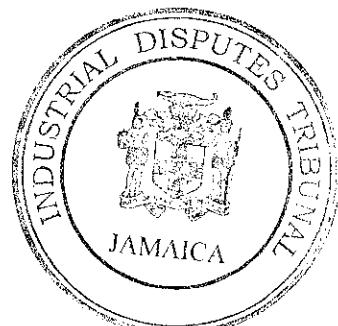
**UNION OF CLERICAL, ADMINISTRATIVE AND SUPERVISORY EMPLOYEES
(THE UNION)**

REFERENCE:

By letter dated December 4, 2020, the Honourable Minister of Labour and Social Security, pursuant to 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 in accordance with 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 the employment of Andrade Young and Roshane Young.”



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:

Hon. Mrs. Justice Marjorie Cole-Smith (Ret'd.)	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2) (c) (ii)
Mr. Fredrick Evans	-	Member, Section 8(2) (c) (iii)

The Contract of Mr. Fredrick Evans, Member of the Division hearing this dispute came to an end and as such he was replaced by Mr. Clinton Lewis, Member. The parties agreed in writing to continue the matter as though it was not interrupted. This was done in accordance with Section 8 (4) of the Labour Relations and Industrial Disputes Act.

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during eighteen (18) sittings held between March 15, 2021 and October 20, 2021.

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

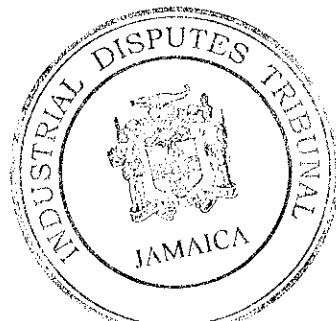
Ms. Kelley Wong	-	Attorney-at-Law
Mr. Mikhail Jackson	-	Attorney-at-Law
Mr. Glendon Johnson	-	Human Resource Director

The **Union** was represented by:

Mr. Vincent Morrison	-	President
Mr. Garth Cheese	-	Chief Delegate
Mr. Michael Moore	-	Chief Delegate

In attendance

Mr. Andrade Young	-	Dismissed worker
Mr. Roshane Young	-	Dismissed worker

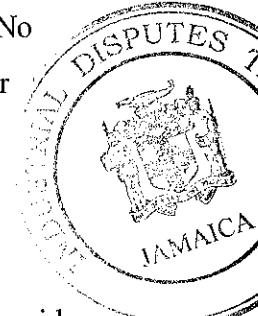


BACKGROUND TO THE DISPUTE:

1. UC Rusal Alumina Jamaica Limited (hereinafter called the Company) is incorporated and domiciled in Jamaica with its registered office located at Kirkvine, Manchester, Jamaica W.I. The principal activity of the Company is the mining and refining of bauxite ore into alumina. The Company owns production facilities at Kirkvine and Ewarton in St. Catherine. Raw material and aluminum are also shipped through the company's port facility located at Port Esquivel in Old Harbour, St Catherine.
2. The Union of Clerical Administrative and Supervisory Employees (UCASE) hereinafter referred to as the Union is duly registered under the Trade Union Act of Jamaica having its registered office at 20 West Kings House Road, Kingston 10. The Union has bargaining rights for certain categories of workers engaged by the Company.
3. Mr. Andrade Young was engaged by the Company as a Contractor pursuant to a fixed term contract dated April 1, 2019 for a period of six (6) months as a Facilities Repairman, (A2). Mr. Roshane Young was engaged by the Company pursuant to a fixed term contract dated April 1, 2019 for six (6) months as a Plant Repairman (A2), Welder.
4. The Company's Resource Protection Co-ordinator, Mr. Dwayne Wellington reported that on Tuesday, August 20, 2019 he was reliably informed by a Port Esquivel employee that the Youngs were involved in a physical altercation which allegedly started on the Port Esquivel compound and further escalated on the Port Esquivel access road. An investigation was conducted into the matter which resulted in the suspension of Messrs. Andrade and Roshane Young. Subsequently, a Disciplinary Hearing was held and the contracts of employment of both Youngs' were terminated. The Union wrote the Ministry of Labour & Social Security requesting their intervention. No resolution was reached and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

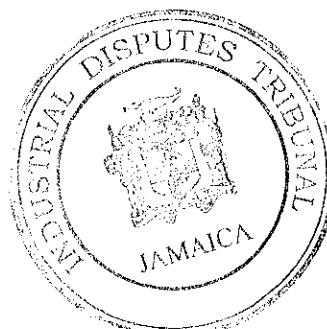
THE COMPANY'S CASE:

5. The Company called seven (7) witnesses in support of its case. Mr. Dwayne Wellington's evidence is that he was reliably informed by a Port Esquivel employee at approximately 4:49 p.m. on

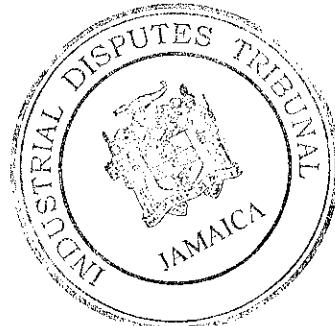


Tuesday, August 20, 2019 about an argument that subsequently resulted in a fight. Mr. Wellington testified that he was told by the employee that he did not see the conflict between the employees, however, while he was at home on the said day he was informed by a friend that Messrs. Andrade Young, Roshane Young and Kimari Nelson were involved in a fight by the main road. He also stated that while he was at work on Wednesday, August 21, 2019 he heard more details of the incident but would not say anything official due to the fact that he did not see the altercation for himself. It was also reported that Mr. Nelson was stabbed twice with a knife by Mr. Andrade Young and Mr. Nelson subsequently submitted a sick leave certificate to his team leader, Mr. Aldrin Dillon.

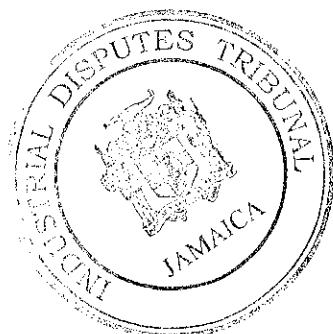
6. It is Mr. Wellington's evidence that he conducted an investigation where he interviewed Mr. Roshane Young on Wednesday August 21, 2019 at about 2:15p.m. During the interview he asked Mr. Roshane Young to tell him what happened on Tuesday August 20, 2019 that had initiated the fight. Mr. Roshane Young told him that he, his father Andrade Young and Kimari Nelson were assigned to do painting at the caustic loading station on Port Esquivel compound and that while they were at the area, Mr. Nelson was reluctant to assist in the painting activity, stating that he was not feeling well. Mr. Roshane Young also told him that the argument escalated to the point where Mr. Nelson started to disrespect his father Mr. Andrade Young. He said Mr. Andrade Young told Mr. Nelson that "*you a little boy, you fi have manners, move from yah so and come out a mi face*". Mr. Roshane Young continued to say that he intervened at that point and told Mr. Nelson that since he does not want to paint, he should leave and Mr. Nelson took up his gears and left.
7. Mr. Roshane Young further told him that after work he and his father Andrade Young were on their way home and upon reaching the intersection of the Port Access Road and Old Harbour Main Road they saw Mr. Nelson. Mr. Roshane Young said that Mr. Nelson beckoned to his father Andrade Young saying that he wanted to say something to him. Mr. Roshane Young said that Mr. Nelson walked around the car to the driver side and slapped his father (Andrade Young) in his face causing his mouth to bleed. Mr. Roshane Young said that he and his father got out of the car and chased Mr. Nelson and when he was close to him he recognized that Mr. Nelson had a scissors in his hand, so he grabbed the hand with the scissors and a struggle ensued.



8. Mr. Roshane Young also told him that the scissors got broken during the struggle and that he was not sure if the scissors had caught Mr. Nelson during the process. Mr. Roshane Young stated that passersby and taxi operators had stopped and intervened by separating them in an effort to terminate the struggle between them, and that was when Kimari Nelson ran into a vehicle and left the scene.
9. On Friday, August 23, 2019 the team that was assigned to the caustic loading station and persons who were said to have seen the altercation were interviewed and they all reported that they were unaware of any altercation among any employee. Mr. Wellington interviewed a Natural Juice Vendor who sells at the intersection of the Port Access Road and Old Harbour Main Road. She said she was dealing with customers when three (3) men ran past her and they were involved in a fight in the vicinity of the Highway 2000 Bridge. The fight was terminated by passersby and she cannot recall if she had ever seen them before.
10. Following the investigation, the Youngs were suspended with immediate effect. They were told that they would be advised of the outcome of the investigation, and the date and time of the disciplinary hearing. As part of its investigation the Company also obtained a copy of the Station Diary from the Linstead Police Station. Constable Anderson, in his evidence, stated that he recalled taking a statement from Kimari Nelson on the night of August 20, 2019 regarding unlawful wounding. The statement was recorded in the Station Diary. The Station Diary stated that the information received from Mr. Kimari Nelson was that '*he was at work at WINDALCO, Port Esquivel, Old Harbour, St. Catherine when an argument developed between himself and two other workers known to him as Andrade Young and Roshane Young who are father and son respectively. About 3:00 p.m. on the said day August 20, 2019, Mr. Nelson said he was in the vicinity of the Hi-Pro Factory waiting on public transportation when he was attacked by both men who stabbed him twice in the upper left section of his chest and lower back. He managed to escape both men and later received treatment at the Linstead Public Hospital. The Station Diary further recorded that Mr. Nelson wanted both men to be warned by the police due to fear that further actions may lead to both parties losing their jobs.*'

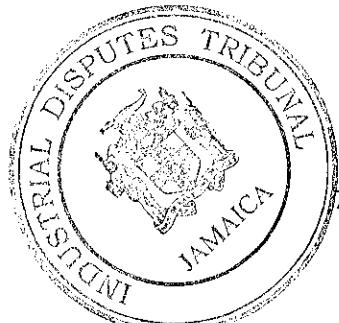


11. It is Mr. Aldrin Dillon's evidence that he was called by a Police Officer from the Linstead Police Station asking him to do some mediation regarding a dispute between the Youngs and Mr. Nelson and bring about some settlement or peace to the whole incident. He said that he enquired of the employees as to what happened but they basically told him nothing happened. He also testified that he received a sick leave certificate dated August 20, 2019 from Mr. Kimari Nelson.
12. After the completion of the investigation, Mr. Dillon on behalf of the Company issued letters to all three employees dated August 26, 2019, inviting them to attend a disciplinary hearing on August 30, 2019 to answer allegations that they were engaged in a fight which started on the Company's premises and escalated in a stabbing incident, resulting in injuries. They were also informed that they were required to provide a written response to the allegations no later than August 28, 2019.
13. Both Messrs. Andrade Young and Roshane Young provided written responses to the allegations by letters dated August 30, 2019 categorically denying that they were involved in a fight or any such incident and or altercation resulting in injuries. Mr. Kimari Nelson by letter dated August 29, 2019 to the Company stated that he was unaware of any altercation, nor was he aware of anyone sustaining stab injuries or being admitted to the hospital. He concluded by indicating that he was available to attend a disciplinary hearing and that he would be represented by Mr. Morrison, Mr. Cheese and Mr. Moore. However, within days of indicating his availability to attend the disciplinary hearing, Mr. Nelson resigned from the Company by letter dated September 3, 2019 effective immediately.
14. The Union requested a postponement of the disciplinary hearing scheduled for August 30, 2019. As a consequence, September 5, 2019 was scheduled for the hearing, and the Youngs were informed that they have a right to hear and question all evidence presented in relation to the allegations against them, and they could be accompanied by a representative.
15. The Disciplinary Hearing took place on September 5, 2019 as was scheduled. The Youngs were given an opportunity to challenge the evidence, including questioning Mr. Wellington and providing their statements and representations. After the Company was through presenting its case,



the Union requested an adjournment of the hearing in order to call its witnesses. Mr. Alva Archer, Employee and Community Relations Manager as well as a Member of the Disciplinary Panel testified that when he asked the Union what guarantee they had that Mr. Nelson would be present, Mr. Morrison's response was that '*only death was sure*' and the request by the Union was therefore rejected.

16. Following the Disciplinary Hearing, the Panel deliberated and provided a Disciplinary Hearing Panel Deliberation Report which concluded that both Roshane Young and Andrade Young were guilty of the charges.
17. On September 6, 2019, the Company issued letters of termination to the Youngs stating that the Company had found them culpable of the allegations against them and therefore, effective immediately their contracts with the Company were terminated.
18. Thereafter, the Union appealed the decision to terminate the Youngs. The Appeal Hearing was chaired by Mr. Lanceroy Morris, Manager, Employee and Community Relations. Mr. Morris in evidence before the Tribunal stated that Mr. Roshane Young, at the Appeal Hearing, indicated that he got out of the car and went across the road, held on to Mr. Nelson's hand because he (Mr. Nelson) had a scissors in his hand. Mr. Morris, after hearing the Appeal upheld the decision of the Company to terminate the Youngs.
19. There was a second Appeal which took place on October 14, 2019 and was chaired by Mr. Leonid Stavitskiy, the Managing Director. At this Appeal Hearing, the Youngs also made their own statements in their defense, namely that there was no fight. Mr. Andrade Young stated that at no time did he and Mr. Nelson have a physical altercation. He admitted that they had an argument but stated there was no physical altercation. The Appeal Panel questioned the Youngs and on this occasion the Youngs made statements in response.
20. Subsequently, by letter dated October 22, 2019 the Chairman of the Appeal Hearing indicated that having reviewed all the material and evidence presented, the Company found no grounds to reverse the Youngs' Termination. The Youngs contended that they have been unjustifiably dismissed by the Company.



21. The Company submitted that in determining whether a dismissal is 'unjustifiable' the Industrial Disputes Tribunal is to carry out its own enquiry. This point was reaffirmed in *University of Technology v. Industrial Disputes Tribunal and others* where the Privy Council stated that: "...the IDT is entitled to take a fully objective view of the entire circumstances of the case before it, rather than concentrate on the reasons given by the employer. It is to consider matters that existed at the time of the dismissal, even if those matters were not considered by, or even known to, the employer at that time. "

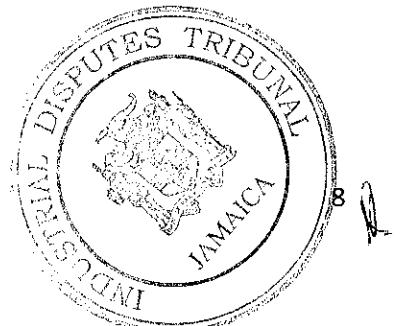
22. The Company further submitted that there was gross misconduct on the part of the Youngs that warranted dismissal, and that in all the circumstances of the case the Company's actions were just, fair and reasonable.

23. Mr. Glendon Johnson, Human Resource Director, in evidence stated that the Company operates a bauxite and alumina plant which has inherent risks to safety and health. As such, all employees, contractors and workers who provide services on the Company's premises are required to adhere to safety regulations. The Company communicates these work rules and policies regularly to all staff and workers providing services on its premises. In this regard, the Company has in place a Company Handbook ('the Handbook'), which is provided to workers.

24. The Company complied with both its internal Disciplinary Procedures as contained in the Handbook, as well as Section 22 of the Labour Relations Code and stated that the procedure overall was fair.

25. It is the Company's case that the allegations against the Youngs were reasonably investigated by the Company. The Youngs were provided with the details of the allegations in writing, and all evidence relative to the matter; and were afforded the opportunity to state their case in response at a Disciplinary Hearing where they were represented by a team of experienced Trade Union Officers of their choosing. The Youngs were also afforded the opportunity to appeal the decision to terminate their contracts and at the appeal hearing the matter was again fully ventilated.

26. It is also the Company's case that the Youngs breached Section 6 of the Labour Relations Code and their actions constituted gross misconduct justifying dismissal.



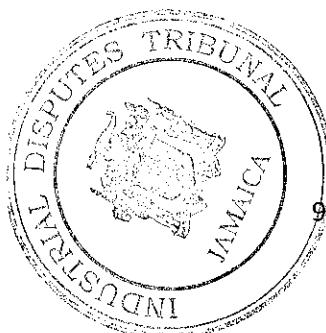
27. Section 22 of the Labour Relations Code recognizes that a worker may be dismissed in a case of gross misconduct. Gross misconduct has been held to connote the most serious types of misconduct. The Company clearly communicated that fighting was gross misconduct which could be met with a sanction of dismissal as per the terms of its Handbook. Based on the Company's Handbook, fighting is identified as an offence attracting a sanction of dismissal.

28. There is no merit to the argument that the procedure was flawed because Mr. Nelson did not attend the hearings to give a statement. Mr. Nelson quite peremptorily resigned from the Company's employment with immediate effect, within days of the allegations arising. As he was no longer employed by the Company, he could not be compelled to take part in the disciplinary process. Furthermore, it is notable that Mr. Nelson was also a member of the Union.

29. Mr. Nelson was not a complainant in the matter nor was he the "accuser". The genesis of the allegations arose from the reports made to Mr. Wellington by unnamed sources whom he identified as other Company employees.

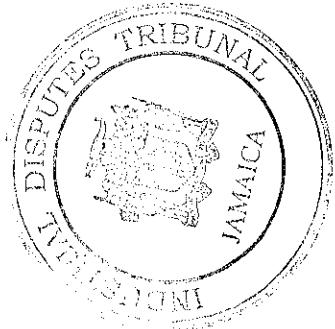
30. The Company was entitled to rely on the statements of anonymous or unnamed witnesses. It is Mr. Johnson's evidence that in the Jamaican community and the close knit WINDALCO community, fears of retribution and reprisal are real issues which would entitle the Company to ensure confidentiality and that informants remain anonymous. The Company has an obligation to maintain the safety and welfare of all workers. It also has a duty to ensure that staff has trust and confidence in management when they cooperate in investigations at the workplace, and to maintain industrial peace.

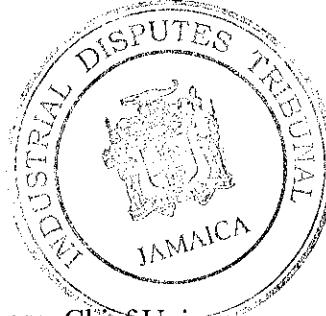
31. The Company also submitted that the Tribunal should also have regard to the famous Jamaican case of *R v. Industrial Disputes Tribunal Ex Parte Bata Shoe Company* and the statements of Parnell J regarding misconduct, where he stated that: *"It is trite law that an employer is entitled to dismiss a worker who is guilty of misconduct. And whether or not the misconduct is so grave as to warrant such a course of action is a question of fact. It would be nothing short of being an insufferable situation and an alarming phenomenon if at a work place, workers were free to be*



obstructive, offensive and undisciplined as their whim and caprice dictated." This was a case in which workers had assaulted the Company's General Manager.

32. Fighting is recognized as a dismissible offence in the employment context and is usually considered gross misconduct whether it occurs during or outside of work hours or on the Company premises. The violent nature of the fight resulting in another employee being stabbed, must undoubtedly be considered conduct of the grossest kind justifying dismissal. The continuation of the fight on a public road is also a matter which could have seriously brought the Company into disrepute. There can be no other finding but that the Young's dismissal was more than justified.
33. However, if the Tribunal disagrees with the Company's position, reinstatement is not an appropriate remedy due to the fact that both Youngs were engaged under fixed term contracts which have already expired, and their dismissal concerned allegations of fighting which resulted in the stabbing of another Company worker.
34. In relation to the IDT's discretion to award reinstatement, reference was made to the case of *Clayton Powell v. The Industrial Disputes Tribunal & Montego Bay Marine Park Trust* where the Court held that the IDT was entitled to take into account the fact that the employee was engaged under a fixed term contract of employment which had already expired at the date of the award; and in the circumstances, it could not order reinstatement to extend the fixed term beyond the expiry date.
35. The Company further submitted that when a fixed term contract expires, it has legally come to an end by effluxion of time. Reinstatement would therefore not be an appropriate remedy and would in fact be improper under law. Additionally, while the Labour Relations and Industrial Disputes Act provides that the Tribunal shall order the employer to pay the worker such compensation as the Tribunal may determine, this is not an unfettered discretion and must be exercised reasonably.
36. The Company strongly urged the Tribunal that any compensation awarded, should not exceed the amount payable for the unexpired portion of the fixed term contracts.





THE UNION'S CASE:

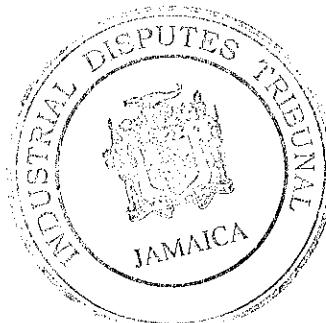
37. The Union called four witnesses in support of its case.
38. It is the Union's case that by letter dated August 23, 2018, Mr. Michael Moore, Chief Union Delegate was notified of an investigation into an alleged fight involving Messrs. Andrade Young, Roshane Young and Mr. Kimari Nelson on Company's premises. The workers were suspended with pay effective August 26, 2019.
39. The Union submitted that there was no fight as alleged by the Company. Both Messrs. Andrade Young and Roshane Young who the Company alleged to be involved in a so called fight gave written statements to the Company categorically denying that a fight took place on the Company's premises or at any other locations on the day in question. Mr. Kimari Nelson by way of letter dated August 29, 2019 stated that *"I am not aware of any such altercation, physical or otherwise on the date in question and or the compound and the road mentioned in your letter. Furthermore I am not aware of anyone sustaining stab injuries and was admitted at the hospital."*
40. The Union said that they are yet to be shown at what location of the Company's premises the alleged fight took place. Further and most importantly at what time of day the fight took place. No evidence was produced by the Company to substantiate its claim that an alleged fight took place on the Company's premises.
41. The evidence of Mr. Michael Moore is that on August 20, 2019, he was passing through the Caustic Loading Station just to visit. On his arrival there was a discussion between Mr. Andrade Young and Mr. Kimari Nelson about a painting job but he was not involved. Mr. Roshane Young came shortly after and asked Mr. Nelson if he was coming to paint and he indicated that he was not feeling well and he told him to go to the changing room and cool off. Mr. Moore said he was there for about fifteen to twenty minutes and left and he did not see any fight between Mr. Nelson and Mr. Andrade Young.
42. Mr. Roshane Young's evidence is that he was assigned to work at the Caustic Loading Station to do welding, sandblasting and painting. He went to the Team Leader and Supervisor to get gears to do the painting. On his return, he saw Mr. Michael Moore and Mr. Nelson who complained of

feeling ill and he told Mr. Nelson to go to the changing room. He did not hear any discussion neither did he see Mr. Nelson push anyone. Mr. Andrade Young and himself left work at about 2:30 p.m.

43. Mr. Andrade Young said he was at work on August 20, 2019 and he was at the Caustic Loading Station where he was assigned to do sandblasting and painting. Mr. Kimari Nelson and himself were there and Mr. Moore came along. Mr. Nelson and himself had discussion about work which he was reluctant to do and he spoke to him like father and son. Mr. Roshane Young came and spoke to him and told him that if he was not feeling well, he should go down to the changing room. It is his evidence that he did not know of any fight. Mr. Wellington asked him about physical altercation at caustic loading station with Mr. Nelson and he said there was none.

44. Mr. Andrade Young in evidence stated that he and Mr. Roshane Young after leaving work and while driving on the access road and entering Bodles Road, Mr. Nelson said "*Patcha Gray I want to talk to you*" (Andrade Young is called Patcha Gray) Mr. Nelson was on the Bodles Road going to Old Harbour and he came and slapped him (Andrade Young) in his face. They both came out of the car and Mr. Nelson went into a vehicle towards Old Harbour.

45. The employees were invited to attend a disciplinary hearing scheduled for August 30, 2019, however, the Union requested a postponement. The disciplinary hearing was held on September 5, 2019 at the Port Esquivel location. The Company presented its case although the Union pointed out that one of the employees, who was alleged to be involved in the altercation was not at the meeting. The Company objected and proceeded with the hearing. After the Company was through presenting its case, the Union requested that the meeting be postponed until Thursday, September 12, 2019 to allow them to present their case and to call all three (3) witnesses. It is the Union's submission that they contacted Mr. Nelson who agreed to attend a rescheduled meeting on September 13, 2019 at 10:00a.m. This information was conveyed to the Company by the Union. However, the Company went ahead and on the following day September 6, 2019, terminated the services of the employees without giving them a hearing.



46. It is the Union's contention that the Company not only breached the Labour Relations Code, but also their own grievance procedural rules as outlined at Section 9.2.2.4 in the Company's Handbook. It is clear that the Company breached all the tenets of Natural Justice of the three employees by refusing to hear their side of the case.

47. Port Esquivel is the second largest and most important seaport in Jamaica behind Port Bustamante. The premises at the Port is equipped and invested with cameras and other high-tech security detection gadgets to monitor all activities and movements within the Port area. It follows therefore that if the dismissed employees were engaged in a fight as alleged by the Company, this would have been captured on the security cameras placed all over the Port compound.

48. *The Union contends that:*

1. both employees were unjustifiably terminated by the Company as no fight by the employees took place either on the Company's premises or beyond on the day in question.
2. the Company did very little to properly investigate the allegations proffered against the workers which led to the unjustifiable termination of the employees.
3. the procedure as it relates to conducting a hearing, outlined in the Company's Policy Handbook was breached by management and the employees were never given a fair hearing before they were summarily terminated by management.

49. Since the employees' termination on September 6, 2019, they have been out of work. They have not been able to gain employment and as a result have suffered irreparable social and economic damage.

50. The Union strongly submits that the employees are not guilty of the charges proffered against them and as such requests that the Tribunal award not only reinstatement from the time of dismissal, but all of the monetary allowances/wages and other benefits that the workers have been denied, and that they be compensated with retroactive effect.

51. The workers have been denied employment and are most anxious to resume their employment with the Company at their Port Esquivel location in Old Harbour, St. Catherine.

THE TRIBUNAL'S RESPONSE AND FINDINGS:

52. The Company in establishing its case relied on the Evidence of Mr. Dwayne Wellington the Investigator. However, his evidence was based on hearsay as he did not witness the alleged fight. The employee who told him about the incident did not witness the fight but heard about it from another employee. The Juice Vendor, although she witnessed a fight, was unable to identify the participants.

53. The evidence before this Tribunal is that Mr. Nelson, the person who was alleged to have been stabbed, has categorically denied any such incident. Both Youngs have also denied their involvement in a fight. The Youngs have however stated in evidence that on the day in question, Mr. Andrade Young was slapped in his face by Mr. Nelson. There is also a Police Report (extract) from the Linstead Police Station indicating that there was a fight in which Mr. Nelson was stabbed. The Tribunal has noted that although the Police Report was taken on August 20, 2019, the extract from the Police Diary was signed and dated 9/9/18 by the Police Officer who certified same to be a true copy. There is also a sick leave certificate from the Linstead Hospital where Mr. Nelson was placed on three (3) days sick leave. It did not state the medical condition on the sick certificate.

54. The Tribunal visited the Locus in quo for clarification purposes. Mr. Wellington showed the Tribunal the Access Road, Bodles Main Road and Highway 2000 Bridge. Mr. Andrade Young demonstrated what happened on the day of the alleged fight. He drove his vehicle from the Access Road to the Bodles Road and stopped at the point where he said Mr. Nelson shouted "*Patcha Gray*" and slapped him in his face.

55. The Tribunal having had a clearer picture of what took place and because there was no evidence other than hearsay from the Company, finds on a balance of probability that there was some sort of altercation involving the Youngs and Mr. Nelson.

56. It is the Union's claim that they had asked for an adjournment at the end of the Company's case, however, the Company did not grant the request. The Tribunal is of the view that this was not an unreasonable request because Mr. Morrison informed the Panel that he had made contact with Mr. Nelson who was willing to attend in a week's time.



57. The Tribunal has concluded that the findings of the investigation by the Company was woefully inadequate. The procedure that was adopted by the Company in executing the disciplinary hearing was not in keeping with the principles of Natural Justice and runs counter to standard industrial relations practices and is therefore at variance with the Labour Relations Code.

58. The evidence from the dismissed workers are that the Company breached the Principles of Natural Justice, Labour Relations Code as well as their own grievance procedural rules as outlined in the Company's Handbook. The rules of natural justice and the statutory requirement require that a person must be allowed an adequate opportunity to present his/her case where certain interests and rights may be adversely affected.

59. Section 9.2.2.4 of the Company's Handbook allowed for the employee to be given an opportunity to respond to each allegation brought against him/her.

60. One of the Principles of Natural Justice is the Latin maxim "*audi alteram partem*" which translates "*let the other side be heard as well*" or "*listen to the other side.*" This is a fundamental legal principle in which each party is entitled to a fair hearing and given the opportunity to respond to evidence against them. In the instant case the workers were denied such opportunity. The Company after presenting their case ought to have given the workers the opportunity to state their case instead of concluding that the Union stated the case for the employees as was submitted in evidence before the Tribunal by both Messrs. Alva Archer, Employee and Community Relations Manager and one of the Panelists who chaired the Disciplinary Hearing, and Mr. Hylton Pinnock Security Manager and the person who marshalled the evidence for the Company. Mr. Archer when asked in cross examination the following by Mr. Morrison had this to say:

Q: Now, did the employees: Mr. Nelson, Young and Young-- did you hear from them on the day in question?

A: They did not speak, their representative did, sir.

Q: So you did not hear from them?

A: No, sir.

Mr. Pinnock when question in relation to the dismissed employees being given an opportunity to state their case had this to say:

A: Yes Sir

Q: Mr. Young?

A: Yes, he did.

Q: What did he say?

A: He stated his position through you, Mr. Vincent Morrison. He also gave a statement which was presented.

Q: did Mr. Andrade Young speak at the meeting?

A: Yes, sir. He spoke through you, Mr. Morrison.

Q: He spoke through me?

A: Yes, sir. He stated that you would have been his representative, Sir.

61. The Tribunal finds no evidence to contradict the contention of the dismissed workers in this regard as the Company failed to observe the provisions of the Labour Relations Code as set out in Section 22 (i) which states:

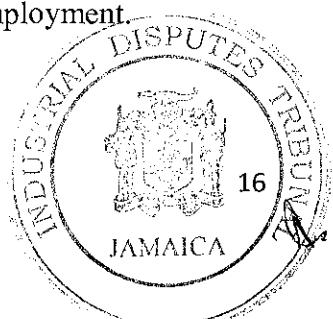
(c) give the worker the opportunity to state his case ...

62. The first Appeal hearing did not address the fact that the Panel did not adhere to the Statutory Requirement or the Principles of Natural Justice and therefore upheld the dismissal. At the second Appeal hearing, the Company failed to address the inadequacies that occurred in both the Disciplinary Hearing and the first Appeal.

63. In light of the above, the Tribunal must point out that under Section 3(4) of the Labour Relations and Industrial Disputes Act, it is obliged to take this point into consideration, 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.”

64. The Tribunal therefore finds that the dismissals were unjustifiable. The Tribunal recognizes that the Youngs were employed on fixed term contracts which would have expired, and it does not possess the power to extend same beyond the expiry date stated in their contracts of employment.



AWARD:

65. In accordance with the provisions of section 12(5) (c) (i) of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Messrs. Andrade Young and Roshane Young be paid all outstanding emoluments from their date of dismissal to the expiration of their contracts.

DATED THE 21st DAY OF DECEMBER 2021

Marjorie Cole-Smith
Justice Marjorie Cole-Smith (Retd.)
Chairman

Errol Beckford
Errol Beckford
Member

Clinton Lewis
Clinton Lewis
Member

Witness:

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