

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 3/2023

SETTLEMENT OF DISPUTE

BETWEEN

UC RUSAL ALUMINA JAMAICA LIMITED (WINDALCO)

AND

UNION OF TECHNICAL, ADMINISTRATIVE AND
SUPERVISORY PERSONNEL (UTASP)

AWARD

I.D.T. DIVISION

MRS. SHARON ANDERSON	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
DR. DENESE MORRISON, JP.	-	MEMBER

DECEMBER 31, 2024



INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

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

AND

**UNION OF TECHNICAL, ADMINISTRATIVE AND SUPERVISORY PERSONNEL
(UTASP)
(THE UNION)**

REFERENCE:

By letter dated January 25, 2023, the Honourable Minister of Labour and Social Security pursuant to Section 11A (1)(a)(i) of the Labour Relations and Industrial Dispute Act, 1975 ("the Act") referred to the Industrial Dispute Tribunal ("the Tribunal") for settlement, the dispute between **UC Rusal Alumina Jamaica Limited (WINDALCO)** and the **Union of Technical, Administrative, and Supervisory Personnel (UTASP)** with the following Terms of Reference: -

"To determine and settle the dispute between UC Rusal Alumina Jamaica Limited (WINDALCO) on the one hand, and the Union of Technical, Administrative and Supervisory Personnel (UTASP) on the other hand, over the termination of the employment of Ainsley Robinson".

DIVISION:

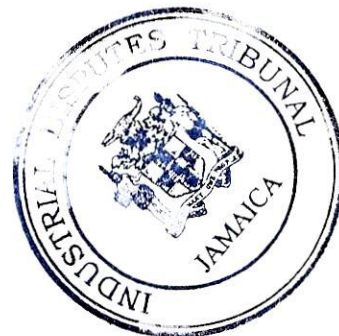
The Division of the Tribunal which was selected in accordance with Section 8(2) (c) of the Act and which dealt with the matter comprised:

- | | | |
|-----------------------------|---|--------------------------------|
| Mrs. Sharon Anderson | - | Chairman |
| Mrs. Jacqueline Irons, J.P. | - | Member, Section 8(2) (c) (ii) |
| Dr. Denese Morrison J.P. | - | Member, Section 8(2) (c) (iii) |

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- | | | |
|------------------------|---|-------------------------|
| Ms. Kelly C. Wong | - | Attorney-at-Law |
| Ms. Katherine Williams | - | Attorney- at-Law |
| Mr. Glendon Johnson | - | Human Resource Director |



The **Union** was represented by:

- | | | |
|-----------------------|---|--------------------------|
| Mr. St. Patrice Ennis | - | General Secretary, UTASP |
| Mr. Owen Brown | - | Negotiating Officer |
| Mr. Romaro Bedward | - | Union Delegate |
| Mr. Dwight Wilson | - | Union Delegate |

In attendance was:

- | | | |
|----------------------|---|------------------|
| Mr. Ainsley Robinson | - | Aggrieved Worker |
|----------------------|---|------------------|

SUBMISSIONS AND SITTINGS:

The parties submitted Briefs to the Tribunal and made oral presentations over nineteen (19) sittings covering the period May 25, 2023 through October 14, 2024. Over the course of the sittings, the Tribunal examined twenty-four (24) exhibits along with testimonies by way of oral evidence.

BACKGROUND TO THE DISPUTE:

1. UC Rusal Jamaica Limited ("the Company") is a company incorporated and domiciled in Jamaica with its registered offices at Kirkvine, Manchester. The primary activity of the Company is the mining and refining of bauxite ore into alumina. The Company owns production facilities in Kirkvine and Ewarton in St. Catherine. Raw materials and alumina are also shipped through the Company's port facility located at Port Esquivel in Old Harbour, St. Catherine.
2. The Union of Technical, Administrative and Supervisory Personnel (UTASP) ("the Union") was established in 1967 and is a registered trade union with its office situated at Suite #8, 3 Beechwood Avenue, Kingston 5. The Union has bargaining rights for certain categories of workers employed by the Company. Mr. Ainsley Robinson was employed by the Company in the capacity of Mechanical Technician in the Hydroblasting Operation Services Department on a two year fixed-term contract effective August 1, 2019 to July 31, 2021.
3. On October 29, 2020, Mr. Robinson was asked to act in the Vehicle Shop until November 2, 2020, as a Vehicle Shop Facilitator and acting Team Leader. This came about as Mr. Devon Maxwell was away from work due to him being in quarantine for COVID-19 virus.
4. On March 23, 2021, Mr. Robinson was dismissed following an investigation that led to disciplinary proceedings regarding his alleged failure to adhere to conditions outlined in a contract between Ewarton Plant Cleaning and Turner's Trucking Limited for hours that were not actually worked. The Company claimed a financial loss of Four Hundred and Sixty-Seven Thousand Two Hundred and Fifty Jamaican Dollars (\$467,250.00).
5. The Company advised Mr. Robinson of his right to appeal. He appealed and the hearing was held on May 5, 2021. Subsequent to the appeal hearing, the decision to terminate Mr. Robinson was upheld.



6. The matter was subsequently referred to the Ministry of Labour and Social Security; however, there was no settlement in the matter, hence it was referred to the Industrial Dispute Tribunal for determination and settlement.



THE COMPANY'S CASE:

7. Mr. Hylton Pinnock was the Company's first witness. He stated that he is the Resource Protection Manager at Windalco since 2012 and that he has been working with the Company for the past twenty-six (26) years. His responsibilities include providing leadership for security functions, conducting investigations regarding security breaches, and reviewing tender documents prior to them being submitted to the appropriate committee for approval.
8. In or about December 2020, the Company's Maintenance Department Director, Mr. Aleksandr Sushko, queried a pending invoice for Turner's Trucking with the Resource Protection Department (RPD). This led to an audit into the administration of the Plant Cleaning Purchase Orders (PO) for 2020 which was conducted by Mr. Hylton Pinnock, Manager, Resource Protection. The findings of the audit were set out in an investigative report.
9. The investigation concerned and related to two specific POs namely PO 40066364 and PO 40067569. Mr. Hylton Pinnock informed the Tribunal that Turner's Trucking was the recipient of a contract to provide plant cleaning services at Ewarton in May 2020. It was determined that due to breaches in the procedure for verification and administration of the plant cleaning contract, Turner's Trucking had been paid for work that was not actually done. The administration of the PO's was the responsibility of the Vehicle Shop and in particular, the Vehicle Shop Facilitator, Mr. Devon Maxwell who was the Team Leader. To provide the plant cleaning services required under the PO, the contractor's trucks were required to truck plant waste from the Ewarton Plant to a dump site off the Company premises. Therefore, for each load of waste removed from the plant, the assigned dump truck would be required to enter and exit the plant using the East Plant Gate.

10. Each truck driver is dispatched with a time sheet, which is confirmed at the security East gates based on verification with signatures to ensure that the trucks worked at the time indicated on the time sheets. These time sheets must be submitted fortnightly as they are used to prepare payment for the truckers. There is also a reconciliation process that is utilized for confirmation of the actual hours worked. The contract does not provide payment to the truckers for idle hours. Mr. Pinnock further stated that it was possible for the East Gate record sheet and the daily record sheet not to capture work done by the contractors as the trucks are sometimes used on the compound.

11. On October 29, 2020, Mr. Ainsley Robinson was recommended to act for Mr. Devon Maxwell, who was infected with the COVID-19 virus and was under quarantine. The acting lasted until November 2, 2020.

12. It is Mr. Pinnock's evidence that the Company discovered that Mr. Robinson had verified two (2) Purchase Orders 40066364 and 40067569 submitted by Turners Trucking Ltd., which were in contravention of the Company's policy regarding payment. He further stated that the hours claimed were incorrect as they were more than the actual hours worked. The process for monitoring and/or verifying the work of the contractor and the hours the trucks were utilized at the Company is as follows:

1. The truck enter/exit the Ewarton Plant East Gate which is manned by a contract security guard posted at the gate.
2. The gate is also monitored by closed circuit television (CCTV) and supervised by the Company's RPD personnel.
3. The security guard at the gate is required to record each truck which enters or exits the gate on a Daily Occurrence Movement Sheet.
4. The security guard is also required to complete an east gate truck record sheet which was provided by the Maintenance Department.
5. The Administrator of the plant cleaning contract collects the completed forms which are then used to verify the hours worked by the contract trucks on a daily basis.

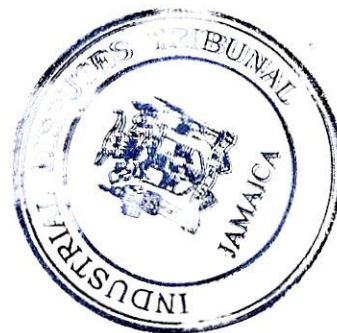


6. After checking to verify the hours worked, the Administrator then signs off on the truck tickets presented by the truck drivers.
 7. Truck drivers are also required to sign the East Gate record sheet prior to exiting the compound with a load of plant waste.
13. Mr. Pinnock stated that upon enquiry, Mr. Robinson explained that he was not aware of the signed contract between Turner's Trucking and the Company as he was not in that department and had not acted in that position before.
14. In light of the above, Mr. Robinson, by letter dated March 4, 2021, was notified that he was being invited to a disciplinary hearing to answer to allegations relative to the administration of the Plant Cleaning Contract, specifically PO 40066364 and PO 400677569. The charges against Mr. Robinson were detailed in the same letter.
15. The disciplinary hearing took place on March 10, 2021, and Mr. Robinson was represented by his Union Delegate, Mr. Dwight Wilson. During the disciplinary hearing, both Mr. Robinson and his representative acknowledged that the truck tickets had been signed by Mr. Robinson. However, Mr. Robinson, in his defense, stated that the responsibility for administration of the contract/PO rested with the vehicle shop. He said that he did not work in the vehicle shop and was merely appointed to act there for a short period in the absence of Mr. Maxwell. He stated that he was unaware of the contracts or the verification process.
16. Mr. Pinnock testified that Mr. Robinson was part of an alleged grand scheme to defraud the Company. He also told the Tribunal that he was not in agreement with the findings of the disciplinary panel which stated that ***'Mr. Robinson acted out of ignorance as he was never trained in the administration of contracts'***.
17. Mr. Dwight Fitzgerald Hart – Maintenance and Reliability Manager, was the second witness for the Company. Mr. Hart informed the Tribunal that his job responsibility includes the supervision of all facilities, the vehicle shop, vehicle technicians, 100 contractors, team



leaders, and other categories of workers. He stated that he was also responsible for plant cleaning, among other assignments.

18. Mr. Hart gave evidence that he was familiar with Mr. Robinson as he was seen as an excellent worker who was reliable and knowledgeable, especially with heavy-duty vehicles. He said that it's because of these attributes that Robinson was sent to Germany for training to operate the new heavy-duty equipment.
19. He stated that Mr. Robinson was stationed in the vehicle shop for five (5) years and then moved to the production group (hydro blaster). His main duties include the maintenance and servicing of units, checking to ensure the quality of work done and overseeing the work done by craft persons.
20. In his evidence he told the Tribunal that the gates are manned by the Resource Protection Department and security personnel and trucks are registered at the gate. He said that sheets are used for reconciliation. Subsequent to verification, the document is sent to Mr. Hart for approval and to the Accounts Department for payment.
21. Mr. Hart testified that he cannot recall Mr. Robinson acting as a Team Leader prior to November 29, 2020. He also confirmed that Mr. Robinson had no training as a supervisor in that particular area. He also testified that there should be a handing over process when a member of staff assumes an acting position, but he could not confirm if that process was implemented. He said that, that exercise should be carried out by Mr. Devon Maxwell, who approved the acting for Mr. Robinson. Mr. Hart indicated that he was not aware of any grand scheme.
22. Mr. Hart stated that waste is sometimes moved within the confines of the plant; therefore, one cannot solely rely on the East Gate document.



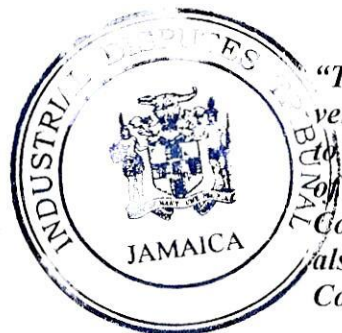
23. The third witness for the Company was Mr. Glendon Johnson, who has been employed at UC Rusal as the Director of Human Resources in excess of thirty years. Mr. Johnson informed the Tribunal that there were three employees involved in the scenario- Mr. Devon Maxwell (Team Leader of Vehicle Shop), Mr. Robert Watkis, and Mr. Ainsley Robinson. He further stated that the irregularities that were identified involved Mr. Watkis. Mr. Watkis was also written to regarding allegations. He stated that Mr. Robinson started acting for Maxwell on October 29, 2020 through to November 2, 2020.

24. Mr. Johnson informed the Tribunal that the contract was for a contractor to remove waste from the plant to the mud-stacking area, which was two (2) miles away. He said the POs number in question had the names of Mr. Maxwell, Mr. Watkis, and Mr. Robinson. He further stated that Mr. Robinson, in his acting position as the Acting Team Leader could contract trucks for work. Mr. Robinson was the Plant Repairman (A1) which is the highest level. Mr. Robinson was not trained in managing administrative contracts and has never before acted in the position of Team Leader.

25. Mr. Johnson also informed the Tribunal that at the time of the hearing, Mr. Watkis was still employed but was not called to the hearing. He further testified that Mr. Maxwell resigned with immediate effect after eighteen (18) years of service and Mr. Watkins tendered his resignation, effective March 15, 2021.

26. Mr. Johnson stated that the panel was chosen by the Company and consisted of employees. He informed the Tribunal that he was not a member of the committee.

27. The conclusion and recommendation of the Disciplinary Hearing Outcome are as follows: -



"The panel concludes that there is a breach in that Mr. Robinson did not verify the work done before signing the tickets. This action resulted in a loss to the Company in paying out J\$467,250. The panel, however, feels that all of this was done out of ignorance in that Mr. Robinson had never seen the Contract and therefore did not understand what he was signing. The panel also noted that Mr. Robinson was never trained in the administration of Contracts".

The Panel is therefore recommending the following

- 1. "That the Company develops an Acting Policy to guide the head of departments as to who is deemed eligible to act in required capacities.*
- 2. That during an acting decision, the head of the department should ensure that the employee taking on the responsibility is competent to carry out all the necessary functions in the role".*

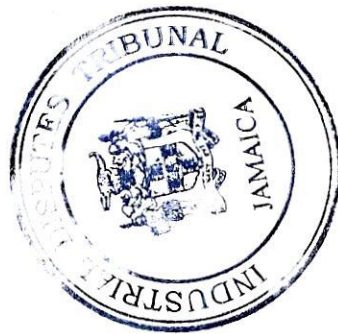
28. Mr. Johnson was asked why the Company did not comply with the committee's recommendation, but he informed the hearing that the management was in its right to take whatever decision it deems fit despite recommendations from the disciplinary committee.

29. The Company's Counsel implored the Tribunal to be cognizant of the fact that the dismissal was a fair one and urged the Tribunal to pay special attention to the judgments of the following court rulings: -

- a. The Institute of Jamaica v. The Industrial Dispute Tribunal and Coleen Beecher*
- b. Village Resorts Ltd. v. The Industrial Dispute Tribunal and Others*
- c. University of Technology Jamaica v. Industrial Dispute Tribunal and Others.*

THE UNION'S CASE:

30. In his opening statement, Mr. St. Patrice Ennis, who represented Mr. Robinson, informed the Tribunal that the Union will prove to the Tribunal whether Mr. Robinson had prior knowledge of the contract, whether he breached the established contract and whether he acted out of ignorance. He stated that there is a qualified period within which payment for acting period would be implemented. He further indicated that there was no supervision nor orientation of Mr. Robinson. He proffered that RPD was the custodian and issuer of the contractual document and that Mr. Robinson was not aware of the East Gate truck tickets. He further stated that there was no accountability for Mr. Hart and Mr. Lawrence.



31. Mr. Ainsley Robinson was sworn in as his own witness. Mr. Robinson excelled in this position and was singled out by the Company for specialized training in Germany. His duties as Hydroblast Technician consist of the cleaning of various plant machinery as well as maintenance of the hydroblast equipment.
32. He informed the Tribunal that he was a Grade 3 Mechanic in the Vehicle Shop and that he was sent to Germany for training. On his return, he was transferred to the department as a Hydroblast Technician. He was never charged with any infraction, and no disciplinary action was ever taken against him prior to this.
33. During the COVID-19 pandemic in 2020, Mr. Maxwell, the vehicle shop facilitator and team leader, contracted the virus and he was asked by Mr. Maxwell to act on his behalf. He was informed of this movement on the same day Mr. Maxwell learnt of his status by the Ministry of Health. Mr. Robinson stated that he had never acted as a team leader before, nor did he receive training on contracts or validation. He therefore was not aware of the policies relating to plant cleaning and validation of contracts. He was required to sign documents on day two of his acting. Although he was acting, if there was a need for additional trucks, he would inform Mr. Maxwell, who would contact the contractor. He also stated that the first time he encountered the Daily Movement and Occurrence Sheet was at the hearing.
34. Mr. Robinson insisted that the statement in exhibit 22, para.2 in which he is said to 'admit to signing off on the truck tickets and invoices representing actual work done by the trucks' was not made at the disciplinary hearing as stated but was made at the interview with Mr. Pinnock who asked him questions and prepared the statement for his (Robinson's) signature.
35. Mr. Robinson confirmed that he knew more about the procedures relating to contract signing in February than he did in November as he made an effort to embark upon a fact-finding mission.



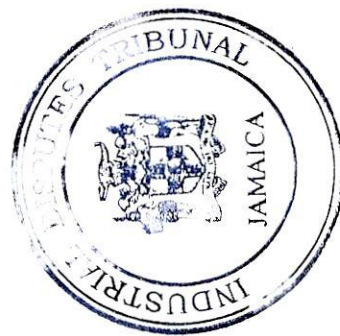
ISSUES IDENTIFIED:

36. The Tribunal must review the circumstances and consider the germane issues that have given rise to the panel's thoughts:

- a. Did Mr. Robinson breach the terms and conditions outlined in the contract between Ewarton Plant Cleaning and Turner's Trucking Limited when he signed off on hours that were not actually worked?
- b. Whether the procedure adapted was consistent with the Labour Relations Code and the principles of Natural justice.
- c. Whether the Company has the right to overturn the recommendation of the Disciplinary Panel having regard to the circumstances of the case and was the sanction of termination imposed by the Company too excessive?

A. Did Mr. Robinson breach the terms and conditions outlined in the contract between Ewarton Plant Cleaning and Turner's Trucking Limited when he signed off on hours that were not actually worked?

37. The evidence before this Tribunal is that on October 29, 2020, Mr. Ainsley Robinson was asked to act as Team Leader for the Vehicle Shop, on behalf of Mr. Devon Maxwell, who was diagnosed with the COVID-19 virus. The acting arrangements lasted until November 2, 2020. During the acting period, Mr. Robinson signed off on truck tickets which were subsequently approved by Mr. Lawrence, verifying the actual work done. The documents in question were two Purchase Orders 40066364 and 40067569, submitted by Turners Trucking Ltd. which were said to be in contravention of the Company's policy regarding payment. According to Robinson, he communicated with Mr. Maxwell who gave him the go ahead to sign the invoices as long as they were submitted from the supervisor of Turner's Trucking. Most of the work reflecting on the invoices was done prior to Robinson's ascension to the acting position.



38. An audit was conducted for the period January through to October 2020 hence, the charges levied against Mr. Robinson. He was charged with the following: -

"You failed to adhere to conditions outlined in the contract that was approved for the Ewarton Plant Cleaning".

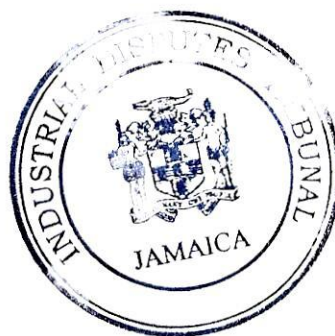
"You approved for full payment of J\$795 375 to contractor Turner Trucking Limited for the period October 2020 even though the details of the contract stipulated that payments will be made on actual hours worked and not idle hours.

Invoice #4133 was submitted for payment of J\$795 375 for the period October 26-31, 2020, it was noted that the corresponding truck tickets for this invoice was signed by you and when cross-referenced against the East Gate Truck Records, showed a discrepancy of J\$467 250."

39. It is important to state that the Act invests the Tribunal with an original jurisdiction to investigate matters as 'finders of fact', requiring us to take a fully objective view of the case. In that regard, we are obliged to carry out a detailed examination of the material and evidence on which we can ground our opinion on whether Mr. Robinson can be held accountable in this matter.

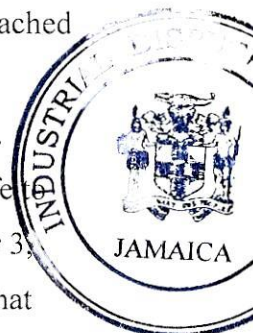
40. The evidence is that Mr. Robinson's ascension to the acting Team Leader's position in the Vehicle Shop Department was sudden, subsequent to Mr. Maxwell's diagnosis with the COVID-19 virus.

The Tribunal therefore agrees with the disciplinary panel that Mr. Robinson acted out of ignorance as he was never trained in the administration of contracts. On the same day that Mr. Maxwell was diagnosed with COVID-19 and sent home, Mr. Robinson was appointed to act in his position. Everything happened suddenly, hence there was no time for training or for Mr. Robinson to be properly oriented prior to being placed in the position. Consequently, Robinson relied on Mr. Maxwell expertise and guidance in carrying out the roles and responsibilities of the Team Lead of the vehicle shop. It is fair to conclude that Mr. Robinson, with no experience or training in the acting role, would likely not be familiar with the specific activities and procedures of that department.



41. The Tribunal finds it very strange that Mr. Hart, being Mr. Robinson's supervisor and the individual approving payments, did not provide a higher level of oversight, especially considering the urgency of Mr. Robinson's acting appointment. The Tribunal therefore concludes that Mr. Hart had a duty to exercise due diligence to ensure the smooth operation of the department.

42. The Tribunal, however, must agree with the disciplinary panel that Mr. Robinson, though acted out of ignorance, as it relates to the administration of the contract, did in fact breached the terms and conditions outlined in the contract between Ewarton Plant Cleaning and Turner's Trucking Limited when he signed off on hours that were not actually worked. Based on all the evidence among the Company's witnesses and the Aggrieved, it is safe to conclude that the acting period started October 29, 2020 and did not exceed November 3, 2020. E-mails sent from Dwight Hart and Antonette Walker on October 29 indicated that Maxwell would be out of office until further notice.



B. Whether the procedure adapted was consistent with the Labour Relations Code and the principles of Natural Justice.

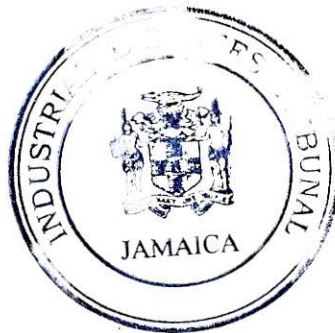
43. On February 18, 2021, Mr. Robinson was called to an interview with Mr. Pinnock, the Resource Protection Manager, in excess of three (3) months after the occurrence. It was at this interview that he realized he was actually giving a statement based on the questions that were being asked by Mr. Pinnock. Mr. Pinnock was also documenting the responses and produced a printed document that required his signature. Mr. Robinson was not aware of an ongoing investigation regarding contract approval or verification.

44. In a similar interview with Mr. Pinnock, Mr. Devon Maxwell confirmed that his job was to oversee the activities of the vehicles, which include repairs and maintenance, plant cleaning, which involves the removal of excess sand and oxalate, non-metal scraps and debris from tanks. His portfolio also requires him to create purchase orders and review documents such as invoices in order to confirm that the work was completed according to the requirements of the Company. Mr. Maxwell was also the company personnel who liaised with or sourced the required contractors. He further stated that if Mr. Lawrence or Mr. Findlay needs additional

trucks, even if they source them themselves, he would subsequently be informed. This statement confirmed Mr. Robinson's that he communicated with Mr. Maxwell when the situation required sourcing additional trucks. Mr. Maxwell was shown truck tickets that were signed off by him, but the investigation proved that the truck was engaged on another project. He also informed that he did not verify the arrival and departure time for truckers as he relied solely on the information provided by the Loader Operators such as Mr. Michael Findlay. Mr. Maxwell tendered his resignation with immediate effect on March 8, 2021 concluding eighteen (18) years of employment with the Company.

45. Mr. Robert Watkis, whose portfolio was a Maintenance Planner worked along with the Team Leader and spearheaded preventative maintenance for mobile equipment for the Vehicle Shop. In his statement he expressed that from time to time he was requested by Mr. Devon Maxell to approve hours worked by trucks assigned to Turner's Trucking. He further explained that even when he was acting as Vehicle Shop Team Leader, he solely relied upon Mr. Maxwell to provide the hours worked by the said contractor trucks. He was not aware of the procedure to sign off on the truck tickets, nor the East Gate Truck Record. Mr. Watkis tendered his resignation with immediate effect on March 15, 2021, concluding four years of employment with the Company.

46. The investigative report, which was produced by the Resource Protection Department highlighted several discrepancies over the period commencing January 30, 2020 - October 31, 2020. Based on the report, Millions of Dollars had been paid out on fictitious grounds, as the hours worked did not harmonize with the report from the security at the East Gate. During this period Mr. Devon Maxwell was the administrator, as he was the acting Team Leader of the Vehicle Shop and was responsible for sourcing contractors along with signing off on payments.



47. The Tribunal concludes that there was an over payment as presented by the Company in the sum of Four Hundred and Sixty-Seven Thousand Two Hundred and Fifty Dollars (\$467,250.00).

48. The Tribunal found that the Company followed the tenets of the Labour Relations Code and the Principles of Natural Justice by having the necessary disciplinary hearings and appeal processes. However, the Tribunal notes the extraordinary circumstances of the case at hand.

C. Whether the Company has the right to overturn the recommendation of the Disciplinary Panel having regard to the circumstances of the case and was the sanction of termination imposed by the Company too excessive

49. In considering the matter before us, it would have been fair, in our view, if the management had instituted an internal review process to examine the recommendation of the disciplinary panel. Where it believed it had the right to act unilaterally, then the right to do so must be evident in the provisions of the disciplinary code and procedure or the collective agreement.

50. This was not done in respect of the matter involving Mr. Robinson. The management failed to demonstrate what exceptional circumstances existed that entitled it to disregard the recommendation, particularly where, in the 'charge letter,' Mr. Robinson was advised that a range of sanctions is available.

51. We maintain that based on the substantial merits of the case, it would be morally impermissible to summarily dismiss a worker with over 14 years of an unblemished record and continuous contract renewal for signing the truck tickets due to the fact that he was not aware of the procedure. Such a punishment is to be considered harsh to the point of being unjust and inconsistent with the spirit and intent of the Code. The Code makes it clear that the praxis of industrial relations cannot be "*confined to procedural matters but includes in its scope human relations...*".



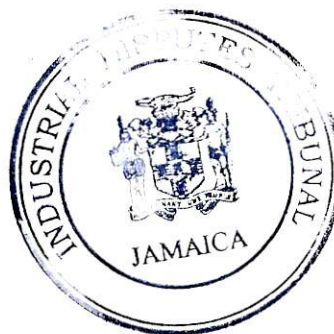
52. In a 2022 judgment by the Caribbean Court of Justice (CCJ), the Learned Judges opined that:

"In practice there is usually no comparison between the consequences for an employer if an employee terminates the contract of employment and those which will ensue for an employee if he is dismissed. In reality people build much of their lives around their jobs. Their incomes and prospects for the future are inevitably founded in the expectation that their jobs will continue. For workers in many situations dismissal is a disaster. For some workers it may make inevitable the breaking up of a community and the uprooting of homes and families."

53. Mr. Robinson, through his Union, expressed a desire to be reinstated if the Tribunal were to find that his dismissal was unjustifiable. Mr. Robinson entered into a contract of employment for two (2) years commencing on August 1, 2019, which meant that his contract would have expired on July 31, 2021. Mr. Robinson's services were terminated on March 23, 2021, effectively four months to the expiration of the contract.

54. Mr. Robinson has had successive fixed-term contracts over an extended period spanning more than ten years, and no evidence of poor performance or previous disciplinary action against him was offered to counter the assertion that he was a good and faithful employee. It is noteworthy that while Mr. Pinnock asserted that Mr. Robinson was interrogated regarding alleged misconduct in the past, the Company failed to present any evidence to corroborate this claim.

55. In examining the circumstances, context and background to the case, we therefore feel obliged to exercise our discretion in favour of reinstatement. There is, from the evidence, a legitimate expectation that Mr. Robinson's contract would have been renewed, and no evidence was led otherwise.



56. The Act empowers the Tribunal, under Section 12(5)(c)(iii), where it finds the dismissal unjustifiable and the worker wishes to be reinstated, to “order the employer to pay the worker such compensation or grant him such other relief...” as it deems appropriate under the circumstances.

FINDINGS:

57. In coming to our conclusion, the Tribunal based its findings on the fact that Mr. Robinson was asked to act in the position of Vehicle Shop Team Leader as a result of COVID-19 without training in the appropriate discipline. He had never acted in that position before.

58. It is interesting to note that Mr. Pinnock agreed that Mr. Robinson was not trained to operate in that area, but he also stridently defends that training was not compulsory. The Tribunal disagrees with this conclusion as there was a need for orientation, guidance and a proper handing over, as this position was new to him.

59. Although Mr. Maxwell was off duty, Mr. Robinson was supervised by him as he provided guidance and instructions regarding the process.

60. The Tribunal agrees with the factual findings of the disciplinary panel that Mr. Robinson did not knowingly attempt to defraud the Company of J\$467,250. He was guided by a trusted employee of the Company, Mr. Maxwell, with 18 years of service, who provided Mr. Robinson with guidance and instructions.

61. The Tribunal concludes that the evidence submitted regarding Mr. Maxwell’s resignation with immediate effect two (2) days to the commencement of the disciplinary hearing is a major cause for concern.

62. Based on the evidence and an enquiry into the overall substance and procedures surrounding the dismissal, the Tribunal found that the Company did not act fairly nor reasonable when it terminated the services of Mr. Robinson. We have therefore concluded that the termination of Mr. Robinson was unjustified.



AWARD:

63. Consequent on our findings that the dismissal of Mr. Ainsley Robinson was unjustifiable, the Tribunal, in accordance with Section 12(5)(c)(iii) of the Act, hereby makes the following award

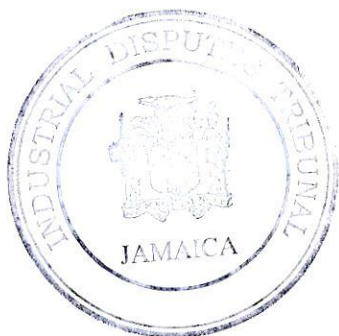
a. That Mr. Ainsley Robinson be reinstated on or before January 13, 2025, with the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for his unjustifiable dismissal;

or

b. Failure to reinstate Mr. Robinson as stipulated in (a) above that he be compensated the sum of Four Million Dollars (\$4,000,000.00) for his unjustifiable dismissal.

64. It is to be noted that the Member appointed under Section 8 (2)(c)(ii) is not in agreement with this Award and her opinion is appended hereto.

DATED THIS 21ST DAY OF DECEMBER 2024



.....

Mrs. Sharon Anderson
Chairman

.....

Dr. Denese Morrison, J.P.
Member

Witness:

.....

Mario Ling
Secretary to the Division

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 3/2023

SETTLEMENT OF DISPUTE

BETWEEN

UC RUSAL ALUMINA JAMAICA LIMITED (WINDALCO)

AND

UNION OF TECHNICAL, ADMINISTRATIVE AND
SUPERVISORY PERSONNEL (UTASP)

MINORITY AWARD

I.D.T. DIVISION

MRS. SHARON ANDERSON	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
DR. DENESE MORRISON, JP.	-	MEMBER

DECEMBER 31, 2024



INDUSTRIAL DISPUTES TRIBUNAL

AWARDS

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

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

AND

**UNION OF TECHNICAL, ADMINISTRATIVE AND SUPERVISORY PERSONNEL
(UTASP)
(THE UNION)**

REFERENCE

By letter dated January 25, 2023, the Honourable Minister of Labour and Social Security pursuant to Section 11A (1)(a)(i) of the Labour Relations and Industrial Dispute Act, 1975 ("the Act") referred to the Industrial Dispute Tribunal ("the Tribunal") for settlement, the dispute between **UC Rusal Alumina Jamaica Limited (WINDALCO)** and the **Union of Technical, Administrative, and Supervisory Personnel (UTASP)** with the following Terms of Reference:

"To determine and settle the dispute between UC Rusal Alumina Jamaica Limited (WINDALCO) on the one hand, and the Union of Technical, Administrative and Supervisory Personnel (UTASP) on the other hand, over the termination of the employment of Ainsley Robinson".

OPINION:

I have read the Award of the Chairman and consenting Member very carefully and am in full agreement with the issues identified, the analyses in support of the issues, and the conclusion reached to Point #62 in respect of the unjustifiable dismissal of Mr. Ainsley Robinson.

MINORITY AWARD:

I disagree with the Award. The reasons for the decision are set out below along with the amount I believe should constitute the Award:


I as a Member of the Panel, recognizes that Mr. Robinson was employed on a fixed term contract which would have expired and the Tribunal does not possess the power to order reinstatement beyond the expiry date, July 31, 2021 as stated in the contract of employment. This is in accordance with the Supreme Court Judgement of Claim No. 2104HCV00318 between Clayton Powell, the IDT and Montego Bay Marine Park Trust.


MINORITY DECISION:

In light of the above, my decision is that Mr. Ainsley Robinson be compensated in the amount of One Million Dollars (\$1,000,000.00) for his unjustifiable dismissal.

DATED THIS 31st DAY OF DECEMBER 2024

Witness:


.....
Mario Ling
Secretary to the Division


.....
Jacqueline Irons
Member

