

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 11/2023

SETTLEMENT OF DISPUTE

BETWEEN

UC RUSAL ALUMINA LIMITED

AND

UNION OF CLERICAL, ADMINISTRATIVE & SUPERVISORY

EMPLOYEES

AWARD

I.D.T. DIVISION

MR. ERROL MILLER, JP.	-	CHAIRMAN
MR. ERROL BECKFORD	-	MEMBER
DR. DENESE MORRISON, JP	-	MEMBER

APRIL 3 , 2024

IDT 11/2023

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

UC RUSAL ALUMINA JAMAICA LIMITED
(THE COMPANY)

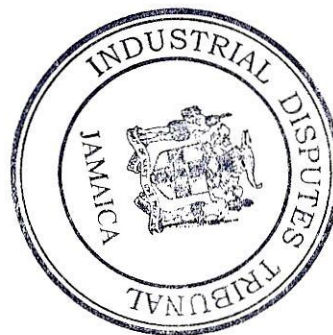
AND

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

REFERENCE:

By letter dated March 31, 2023, 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:

“To determine and settle the dispute between UC Rusal Alumina Limited on the one hand and the Union of Clerical Administrative and Supervisory Employees on the other hand over the Union’s claim for increased wages and other improved fringe benefits for the period November 2021 to November 2023.”



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)
- Dr. Denese Morrison, JP - Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- Mr. Allan Wood, KC - Attorney-at-Law
- Ms. Kelley Wong - Attorney-at-Law

In attendance:

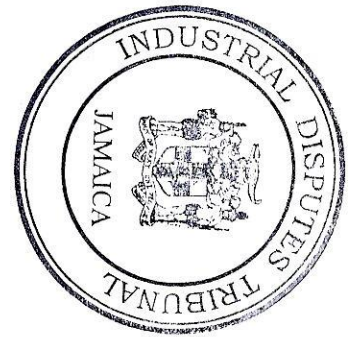
- Mr. Glendon Johnson - Director of Human Resources
- Mr. Leonid Stavitskiy - Managing Director
- Ms. Anna Lavrukhora - Translator
- Mr. Alexey Zaytsev - Information Technology and Finance Director

The **Union** was represented by:

- Mr. Vincent Morrison - President
- Mr. Sanjay Lawson - Organizer

In attendance:

- Mr. Garth Cheese - Chief Delegate
- Mr. Michael Edwards - Delegate
- Other Delegates /Workers



BACKGROUND

UC Rusal Alumina Jamaica Limited is a Company 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 in Manchester (closed since 2009) and Ewarton in St Catherine. Raw material

and alumina are shipped through the Company's port facility located at Port Esquivel in Old Harbour, St. Catherine

The Union of Clerical, Administrative and Supervisory Employees (UCASE) is a registered trade union under the Trade Union Act and has bargaining rights for craft employees of the Company since November 3, 2015.

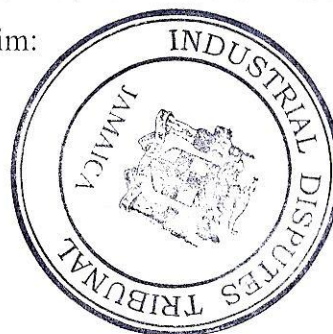
By letter dated October 7, 2022, the Union submitted a 20-point wage and fringe benefits claim on the Company for the contract period November 2021 to November 2023. Negotiations at the local level broke down and the parties sought the assistance of the conciliatory services of the Ministry of Labour and Social Security to assist in resolving the matter. However, efforts at conciliation were unsuccessful and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement by the Honourable Minister. The Tribunal was advised that a 72-hour strike notice expiring on Monday, April 3, 2023 was served by the Union on the Company.

Consequently, both parties were invited to an Emergency Sitting of the Tribunal, convened on Saturday, April 1, 2023, but the Union did not attend the Sitting. The Tribunal heard the matter ex-parte and issued an Order To Refrain From Industrial Action which was published in the media in accordance with Section 12 (5A) (b) of the Labour Relations and Industrial Disputes Act. This was for the workers to refrain from industrial action, however, the workers nonetheless resorted to industrial action effective Monday, April 3, 2023.

The Tribunal had a further sitting on May 3, 2023, subsequent to the workers resuming normality and the parties were requested to submit Briefs prior to hearing of the dispute.

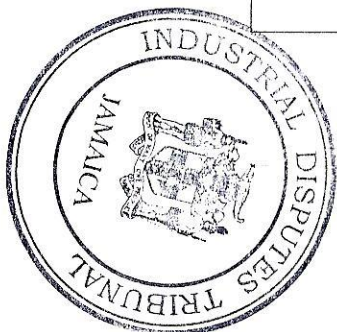
UNION'S CASE

1. Mr. Vincent Morrison, President of the Union of Clerical, Administrative and Supervisory Employees, in his opening submission, indicated that the Union served a 20-point claim on the Company for increased wages and other improved conditions of employment for the contract period November 3, 2021 to November 2, 2023. The following is a reproduction of the Union's claim:



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ITEM #	CLAIM	UCASE'S POSITION
1	Duration of Contract	The duration of this contract shall be for two (2) years commencing November 3, 2021 to November 2, 2023.
2	Wages	a. That an increase be granted of not less than 12% in year 1 and an additional increase of 15% in year 2. b. Reclassification exercise to be carried out.
3	Signing Bonus	There shall be a signing bonus of \$75,000.00 for all active members of the union (UCASE).
4	Education Assistance	(policy document to be established) Basic/ Prep: Year 1 - \$20,000, Year 2 - \$25,000.00 Secondary/High: Year 1 - \$30,000, Year 2 - \$40,000 To be prorated for casual and temporary employees Tertiary – Three (3) scholarship per annum for employees' children.
5	Travelling Allowance	There shall be a monthly allowance of \$9,500.00 in year 1, \$10,000.00 year 2.
6	Shift Premium	Shift Premium shall be 20% of basic rate.
7	Laundry Allowance	Provision to be made to enable employees to launder at least two sets of working uniforms each week – claim the amount of \$5,000.00 per week in year 1 and \$7,000.00 per week in year 2.
8	End of Service Employment (EOSE)	This shall be increased by 15%.
9	Call Out/Call Back	Double time pay for call out/call back.
10	Life Insurance	Personal life insurance coverage for employees shall be 3 Million or 3 times basic annual salary.



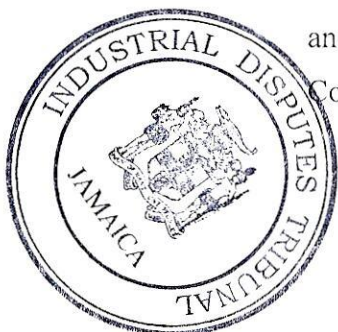
11	Unusual Discomfort Allowance	\$42 per hour in year 1 and \$52 per hour in year 2.
12	Lunch Subsidy	To be discussed.
13	Meal Allowance	\$1700.00 per occasion -overtime/out of base.
14	Existing Contract	Fixed term contract arrangement to be discussed and clarified and agreed upon.
15	Redundancy Payment	5 weeks pay after completion of two years service.
16	Public Holidays	To be paid at triple time when worked.
17	Overtime	Overtime will be paid after 8 hours work per day or 40 hours per week at a rate of time and a half.
18	Pension Scheme	That a proper contributory pension scheme be introduced.
19	Reserve Clause 2	The Union reserves the right to amend its claim during clarification meeting.
20	General	All other benefits and allowances that are not mentioned above shall remain.

2. Mr. Morrison advised that the only item of claim that was settled by the parties was the Duration of Contract c. He called two witnesses to provide evidence in support of the Union's case; Mr. Michael Edwards, Lead Operator at Kirkvine Works and Union Delegate and Mr. Garth Cheese, Heavy Duty Equipment Operator and Chief Union Delegate.
3. Mr. Edwards testified that he has worked at the plant for 43 years. He said that in 2010, his position was made redundant but that he was subsequently offered a fixed term contract for two years which he accepted and that this contract continues to be renewed on each expiration. He agreed that some of the benefits that were applicable prior to the closure of the Company in 2010, are no longer contained in the new contract of employment which he accepted.



am

4. Mr. Edwards said that over the past ten years, assets such as pumps, motors and rakes have been moved from Kirkvine to the Ewarton plant. He said that apart from the bauxite operations, the maintenance workers at the Kirkvine plant are engaged in other operations in which the Company is involved, such as farming, housing and real estate. He said that there are about 40-50 production workers at this plant and he is responsible for patrolling the plant to ensure that the equipment are kept in operable condition, commonly referred to as mothballing.
5. Mr. Garth Cheese, in his testimony, said he had been employed to the Company since 1989. He spoke to the various items of the wage claim, citing their historical application and justifying the basis for the claims.
6. He compared the current compensation of the workers with those paid prior to the closure of the Company in 2010 and concluded that they are inferior and that a number of the benefits have been taken away from the workers. Mr. Cheese also compared the wages and benefits to those paid in other bauxite companies. He said that wages and benefits paid to those workers were superior to that being paid to the workers at UC Rusal and concluded that they were the lowest paid in the sector.
7. Mr. Cheese said that the fixed term contracts took away all rights including redundancy payments. He said that instead, an allowance was introduced into the contract to cover payment for overtime, working on holidays and shifts, call out/call back allowance and acting in other capacities and that this allowance was inadequate. He said that a Signing Bonus was being paid at JAMALCO. He also raised concern that some temporary workers are not in receipt of travelling and laundry allowances and felt the practice was discriminatory. He, however, admitted during cross examination that there was no item of claim on travelling for temporary workers.
8. He testified that the Union sought to bridge the gap in respect of Pensions by introducing a Retirement Scheme administered by JMMB which is funded by contributions from the workers. He, however, confirmed that the item of claim is for the Company to introduce a contributory Scheme for all workers.
9. Mr. Cheese, in his testimony, said that the Company produced record levels of alumina and hydrates between 2010 and 2023. However, during his cross examination, the Company introduced evidence that showed production levels between 2009 and 2022



and which indicated that there has been a decline since 2018. In an examination of the document, Mr. Cheese agreed that since 2011, the production level was at its lowest in 2022 of 422,237 tons.

10. He accused the Company of selling its products below market rates to Rusal Trading Incorporated (RTI), a trading company of UC Rusal and opined that the transactions were not at arm's length given that RTI is a part of UC Rusal. However, in cross examination, he agreed that the formula used in the sale to RTI was advantageous to the Company as seen in the following exchange:

Q: And if you apply 14% to that which is the RTI formula you would come out at \$377.98 by my Maths?

A: Okay

Q: And if you use the higher LME three-month price which is \$2,708.52 you come out at \$379.19. And if that maths is correct those figures at 14% are again higher than the Jamaica Average Alumina Price for 2022. Correct?

A: Okay

Q: So again if those figures are correct you would agree that it simply demonstrates that the RTI pricing formula in the agreement that is before the Tribunal is not out of step with the market in terms of the price that it results for the alumina price that results at 14%. Would you agree that is what is reflected on that maths?

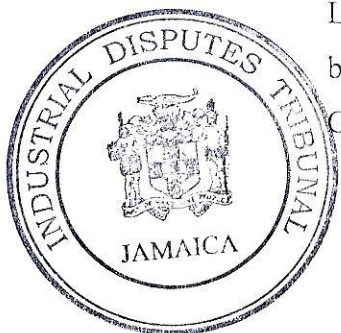
A: Yes, what is reflected on the paper. I agree with what you are saying on the paper.



11. Mr. Cheese said that the Union did not believe the Company that it was unable to meet the Union's claims due to accumulated losses, as it felt that the figures were being manipulated. He described the losses by the Company as paper losses which are not genuine and are shown to avoid paying decent wages to the workers. However, in cross examination, Mr. Cheese agreed that in 2022, the full cost of producing a ton of alumina was US\$586.92 while the average price of alumina was US\$377.98 resulting in a loss of US\$208.94 per ton of alumina produced.

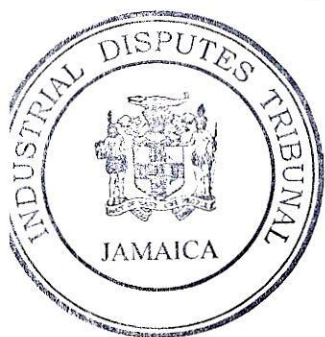
12. Among the Union's contentions are that:

- a. The terms and conditions should be no less or inferior to those existing when the plant was closed in 2008 and the decrease in rates of pay and benefits by 40% when the plant reopened in June 2010, is highly unfair to the employees.
- b. The terms and conditions of employment of the workers are well below current rates paid to workers at Noranda Bauxite Company and JAMALCO and that the waiver of the Bauxite Production Levy between 2010 and 2018, have provided the Company with the necessary economic space, financial capabilities and the ability to adjust wages and benefits, in line with rates at Noranda and JAMALCO Bauxite Companies.
- c. The production and productivity levels since the re-opening of the plant have been excellent. Production targets have been set and met by the Company on a regular basis, which should provide the platform for better wages and incentives to the workers.
- d. The non-payment of overtime, premium for holidays, notice and redundancy payments, shift premium, discomfort allowance and end of service earnings (EOSE), is a most retrograde step within the context of the industrial relations landscape, not only in the Bauxite and Alumina Industry, but in Jamaica and the wider Caribbean.
- e. The devaluation of the Jamaican Dollar, the waiving of the Bauxite Production Levy, and the gradual increase of bauxite and alumina, have set the stage for a sound economic rebound of the industry locally and internationally.
- f. The low oil price, caustic soda, white lime, other raw materials in the production process and low pay rates have created the right climate for the Company's investments and eventual profitable returns to shareholders.
- g. Accumulated inflation rate between 2010 and present, exceeds 75% and this fact has certainly eroded the purchasing power of the employees, thus creating extreme hardship and difficulty for the employees and their families.
- h. The pricing arrangements between UC Rusal Jamaica Limited and Rusal Trading Incorporated (RTI) are not at arm's length, as both production targets and pricing mechanism are set by the Managing Director. It is established that UC Rusal Jamaica Limited sells alumina produced at Ewarton Works to RTI Ltd., Jersey, at a price agreed between itself and RTI Ltd., Jersey, an affiliate company of the parent company, United Company Rusal Plc.



THE COMPANY' CASE

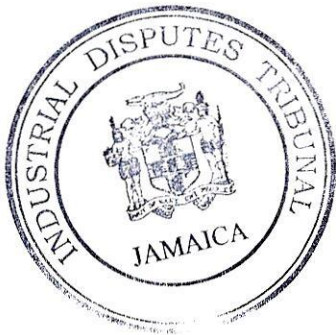
13. Mr. Allan Wood, KC, in his opening submission, indicated that the Company was experiencing financial stress and that its survival depended on support from its parent company. He said that this is further exacerbated by the war between Russia and Ukraine. He said that the Union's claim would add another US\$12M to the Company's wage bill which was unsustainable and urged the Tribunal to consider the national interest as it examines the claim. He called three witnesses to support the Company's case: Mr. Leonid Stavitskiy, Managing Director, Mr. Alexey Zaytsev, IT and Financial Director and Mr. Glendon Johnson, Director of Human Resources.
14. Mr. Stavitskiy, in his evidence, spoke of the impact of the global economic crisis with specific reference to the Bauxite and Alumina Sector and the consequential financial challenges on UC Rusal Jamaica Limited, resulting in the closure of its refineries and the termination of all its employees in 2009. He said that with the intervention of the Government of Jamaica, the Company received certain concessions to the bauxite production levy resulting in the restart of operations in 2010 at the Ewarton refinery. All employees who were re-employed were engaged on fixed term contracts due to the precarious nature of the industry and the financial challenges being experienced. He noted that since the re-commissioning of the refinery in 2010, the Company has sustained substantial losses in almost every year of operation as evidenced by the audited financial statements.
15. A joint venture arrangement between the Company and the Government of Jamaica (GOJ) in which each partner had shares of 93% and 7% respectively was terminated in 2014, when the GOJ sold its 7% share to the Company. This was due to losses resulting from the falling alumina prices while the cost of production kept rising. Since the sale, the Company has owned 100% of the operations and consequently has been absorbing all the losses.
16. In providing further evidence relating to the persistent financial challenges being experienced by the Company, Mr. Stavitskiy spoke of the concessions in the bauxite production levy payable to the GOJ for the period June 4, 2014 – March 31, 2018. [EXH. 51-51A]. He presented evidence of the special conditions provided by the Government



to maintain employment and production levels which saw an agreement for the Company to pay to the Government 40% of the outstanding levy for the period April 2018 – September 2021 and the remaining 60% to be paid over 30 months at a rate of approx. US\$656,400 or J\$101.7M per month. [EXH 27 & 28].

17. He said that annual losses in 2021 and 2022 were US\$47,621 and US\$94,235 respectively and that the Company's financial performance was affected by several factors, to include:

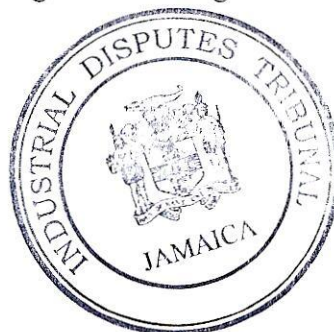
- Unfavourable market conditions.
- Volatility of prices on the world market.
- High costs of inputs for production.
- Obsolete machinery and maintenance issues resulting in high production costs. The loss of one turbine affected the production of electricity and the volume of production.
- Inferior quality of bauxite reserves and the absence of licence to mine in new areas.
- Cost of capital expenses such as building new haulage roads
- Impact of the Ukraine war leading to:
 - a. imposition of sanctions and cash flow restrictions to the extent that wages paid to staff were affected.
 - b. Suppliers refusing to supply equipment and spare parts.
 - c. The cost of purchase for re-engineering services became more expensive.
 - d. European, USA and Canadian suppliers reduced/refused to do business with the Company.



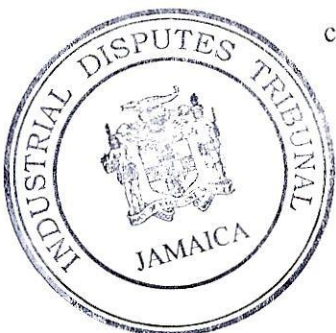
18. Mr. Stavitskiy stated that the claim from the Union would add over US\$12M to its current wage bill and within the context of its financial state, this was not affordable. He said that despite the significant loss position, the Company made a reasonable wage offer to the Union of 6% in year 1 and a further 6% in Year 2 of the Contract. He said that based on the compensation structure, movements on basic wages would impact the Excess Hour payments which includes the payment for working additional hours, working on

shifts, holidays call-out/call-back, acting in other capacities and the payment of production incentive, once the targets are made. However, he said that the Union refused the offer, and the workers subsequently took strike action. The impact of the strike was that neither raw materials such as caustic soda and fuel could be received nor were finished goods able to leave the plant resulting in stockpiling of goods and reduction of raw material.

19. Mr. Zaytsev, the second witness, has been the Company's Finance Director since 2015 and has responsibility for preparing the Company's financial statements and other related accounting information. He tendered as evidence, the Company's audited/unaudited financial statements for the years ending December 2020 and 2021 respectively, which attested to its accumulated losses. These disclosed, that for the year ended December 2020, the accumulated loss was US\$1,021,058 while the Unaudited Statement for the year ended December 2021 reflected an increased accumulated loss to US\$1,068,679.
20. Mr. Zaytsev confirmed that the sanctions imposed due to the Russia /Ukraine war has been having a devastating impact on the Company's operations. Among the effects are that the international firm of Auditors engaged by the Company, declined to provide further services in the auditing of its accounts while requests for proposals from other suppliers have been rejected. This led to the unaudited financial statements for 2021 and 2022. He further testified and provided evidence that the Company also experienced challenges in banking support from both local and international banking institutions affecting its credit arrangements with suppliers and ultimately its cash flow position.
21. He stated that contrary to the Union's assertion that prices for alumina sold by the Company were not set at arm's length, he explained that the RTI agreement was a formula that fixed the price mechanism at 14% of the London Metal Exchange (LME) average settlement price for alumina. This, he said, has been a well-known formula used by companies to price their products and stated that prior to UC Rusal acquisition, Glencore used 12.5% which was less than the 14% now being used. He also testified that this arrangement has certain advantages as it has a guaranteed market for the Company's full production of alumina.



22. Mr. Zaytsev explained that the three previous IDT Awards had impacted the Company's wage bill and stated that the current annual wage bill for all employees is approximately US\$24M
23. Mr. Glendon Johnson, the third witness for the Company, testified that he has over 30 years' experience in the industry and is currently the Director of Human Resources.
24. In his evidence, Mr. Johnson referred to the closure of the Company in March 2009 and spoke of the impact it had, not only on the workforce, but also on the surrounding communities in which the plant is located. He spoke about some of the conditions of employment that existed prior to the closure and compared these to the period between 2010 to the present. He outlined that due to the fragile nature of the industry, fixed term contracts were issued to the workers. He said that of the total staff of approximately 1200 persons, UCASE represents approximately 700 workers.
25. Mr. Johnson referred to the financial challenges being experienced by the Company and its inability to meet the cost of the Union's claim which was costed at approximately US\$12M.
26. He said that there was agreement on the duration of the contract, which is for the period November 2, 2021 to November 3, 2023. He also testified that the Company had made an offer during the conciliatory meetings to increase the coverage on the Life Insurance coverage by \$1M to \$3M.
27. In going through the Union's Claim, he provided detailed responses of the Company's position on each item.
28. The Company contends that:
 - a. Given the sustained losses which are substantiated by its audited financial statements and unaudited management accounts, as well as all the other challenges outlined, it is unable to provide further increases to salary or fringe benefits at this time.
 - b. Some items of the Union's claim are regulated and controlled under the laws of Jamaica.
 - c. Many of the claims concern matters which fall within the power, authority or prerogative of management and are therefore "non-arbitral" items.



ANALYSIS AND FINDINGS OF THE TRIBUNAL

The Tribunal sets out its analysis and findings as follows:

29. The Company has pleaded inability to afford the claim from the Union because of its poor financial state. The Union, on the other hand, has challenged the Company's claim that it is having financial challenges, but it has provided no evidence to support that position.
30. It is clear from the evidence that based on the 2008/09 global economic crisis, substantial changes have taken place leading to the closure of the Company in 2009. It is also compelling to note that unlike the other Bauxite Companies, UC Rusal continues to face economic challenges particularly with the direct imposition of sanctions occasioned by the Russian/Ukraine war over the last two years. These conditions have forced the Company to make radical adjustments to its operations.
31. Mr. Stavitskiy and Mr. Zaytsev have both given evidence of the continued financial challenges being experienced by the Company since it re-commenced operations. They have indicated that the survival of the Company's operation has been dependent largely on support from its parent Company as well as concessions made by the Government of Jamaica on the payment of the bauxite levy. The GOJ's intervention also provided special conditions for the Company to maintain employment and production levels. Based on the accumulated losses contained in the Company's financial statements, it has demonstrated that it would not be able to meet the Union's claim.
32. It should be noted that the three previous wage negotiations between the parties broke down and were referred to the Tribunal for adjudication. In addition to the evidence provided in this matter, the three previous Awards of the Tribunal have succinctly outlined some of the evidence presented by the parties and these have not deviated over time.
33. Evidence was presented that the annual month to month inflation rate for 2021 was 7.3% and 9.4% for 2022 and that the point-to-point rate for June 2022 – June 2023 was 6.3%. The average annual inflation rate for the period of the claim 2021-2023 was approximately 7.6%. The Company, therefore, submitted that the offer it made to the Union would exceed inflation when the consequential increase to the production bonus and the Excess Hours payment are made, since they are linked to the rate of basic salary.



34. Despite the foregoing challenges by the Company, it must be borne in mind that the workers continue to experience rising cost of living which serves to erode the value of their income. It is against this background that the Tribunal considers the positions outlined on each item of claim and makes its findings:

- Item 1. The duration of the contract for the period November 3, 2021 to November 2, 2023 was already agreed.
- Item 2. Wages.
- Item 3. The conditions for a Signing Bonus are for the expeditious settlement of the claim, reasonableness of the claim and no industrial action. These conditions were not satisfied.
- Item 4. The current arrangements are for Education Assistance to be provided to four children of the workers. The additional cost to extend this item of claim is J\$34.73M, which the Company indicated is not affordable based on its current financial state.
- Item 5. Travelling allowance is paid to employees who are on a two-year contract. Temporary workers are not in receipt of this benefit which was not an item of claim.
- Item 6. Shift Premium. Items 6 (Shift Premium), 9 (Call-out/Call Back), 16 (Public Holidays) and 17 (Overtime - payment for working additional hours) are included in the payment for Excess Hours and will benefit from any increase in basic wages.
- Item 7. Laundry Allowance currently stands at \$3000 per week.
- Item 8. End of Service Employment is not in place.
- Item 10. Life Insurance- the Company has indicated in its evidence that it is willing to consider increasing the coverage of personal accidents to \$3M.
- Item 11. Unusual Discomfort Allowance.



- Item 12. Lunch Subsidy applies only where concessions are present and at which the concessionaire provides food and staff.
- Item 13. In respect of Meal Allowance, the current rate is \$1500, that is, expenses are reimbursed up to that amount.
- Item 14. Existing Contract – All workers are currently on fixed term contracts and given the state of the industry as well as the financial health of the Company, no change is proposed.
- Item 15. Redundancy Payment -There is an exclusion clause in the fixed term contracts and therefore redundancy is not applicable as provided for under Section 8(2) of the ETRPA.
- Item 18. Pension Scheme – UCASE has established a Corporate RS Plan in August 2020 that is an approved Retirement Scheme under the JMMB Retirement Solutions. In June 2023 the plan had 233 members. Given that some workers are already contributing to this Retirement Scheme, both parties should discuss the matter to determine whether the Company may be able to make a contribution to the Scheme.



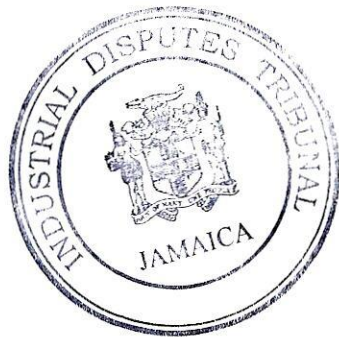
AWARD


After carefully deliberating on the evidence presented by both parties, the Tribunal makes the following Award:


- **Item 2 - Wages** - An increase of 6.5% on basic wages with effect from November 3, 2021 and a further increase of 7.5% with effect from November 3, 2022.
- **Item 5 - Travelling Allowance** - An increase from the current rate to \$9,500 per month with effect from November 3, 2021 to persons currently in receipt of this allowance.
- **Item 7 - Laundry Allowance** - An increase to \$4,000 per week with effect from November 3, 2022.


- **Item 13 - Meal Allowance** - To be reimbursed to a maximum of \$1,600 per occasion with effect from November 3, 2022.
- **Items 3, 4, 6, 8 - 12, 14-20** - We make no Award.

DATED THIS 3rd DAY OF APRIL 2024.





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Mr. Errol Miller, JP
Chairman


.....
Mr. Errol Beckford
Member


.....
Dr. Denese Morrison, JP
Member

Witness:


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