

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: 4/2020

SETTLEMENT OF DISPUTE

BETWEEN

ALLIANCE ONE

AND

MR. ALTON MORRIS

AND THE

AWARD

I.D.T. DIVISION

MISS. SADEERA SHAW - CHAIRMAN

MR. RODCLIFFE ROBERTSON - MEMBER

MR. KEITH FAGAN - MEMBER



AUGUST 31, 2022

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**ALLIANCE ONE
(THE COMPANY)**

AND

**MR. ALTON MORRIS
(THE DISMISSED WORKER)**

REFERENCE

By letter dated May 5, 2020, the Honourable Minister of Labour and Social Security, in accordance with Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred the matter contained herein for settlement by the Industrial Dispute Tribunal.

The Terms of Reference were as follows:

“To determine and settle the dispute between Alliance One on the one hand, and Mr. Alton Morris on the other hand, over the termination of his employment.”



DIVISION

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

Miss Sadeera Shaw	-	Chairman
Mr. Rodcliffe Robertson	-	Member, Section 8(2) (c) (ii)
Mr. Keith Fagan	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

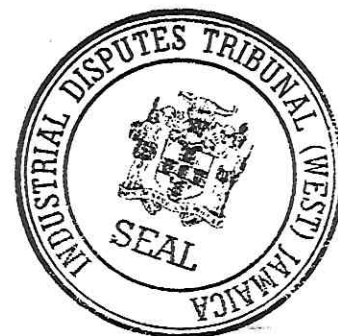
Mr. Gavin Goffe	-	Attorney-at-Law
Mr. Jahmar Clarke	-	Attorney-at-Law
Mr. Jake Becker	-	Vice President of Operations
Ms. Samantha Brown	-	Human Resources Director
Maureen Johnson	-	Employee Relations Human Resources Manager
Shaunette Burgess	-	Company Representative

The **Aggrieved** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
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In attendance

Mr. Alton Morris	-	Dismissed Worker
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SUBMISSIONS AND SITTINGS

Briefs were submitted by both parties who made oral submissions during seventeen (17) sittings held between August 24, 2020 and May 26, 2021.

BACKGROUND TO THE DISPUTE

1. Alliance One, *hereinafter referred to as the Company*, is a subsidiary of Teleperformance and is headquartered in Trevose, Pennsylvania in the United States of America. The Company is registered in Jamaica as a Business Process Outsourcing Company located at 1 Mangrove Way, Building 8, Montego Bay Free Zone in the parish of St. James where it employs approximately 3,500 workers.
2. Mr. Alton Morris, *hereinafter referred to as the Dismissed Worker*, was employed on the 31st of December 1999 as a Contact Center Manager. By way of letter dated June 3, 2015, the Dismissed Worker's employment was terminated. At the time of his dismissal, he held the position of Assistant Call Centre Manager.
3. The Dismissed Worker engaged the services of Mr. Howard Duncan, Industrial Relations Consultant, who contested his termination and sought the intervention of the Ministry of Labour & Social Security. No resolution was reached and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.



THE COMPANY'S CASE

4. The Company made oral submissions and called two (2) witnesses in support of its case. The first witness was Ms. Samantha Brown who gave evidence that she was Human Resources Manager at the material time and was later promoted in or about 2018 to the position of Human Resources Director. She explained the relationship between Teleperformance and Alliance One to the effect that Teleperformance is the parent company of Alliance One.
5. She testified that she was familiar with the Dismissed Worker since 2011 and that he was exposed to the policies of the Company including the sexual harassment policy. Ms. Brown went on to explain that there were sexual harassment trainings which were usually conducted by Ms. Katriana Giles, the Human Resources Director, at the time. Ms. Giles

travelled to Jamaica to conduct the said trainings each year. Due to advancement in technology, the training materials were placed in the communication system and all employees were required to review and acknowledge them.

6. In the sexual harassment policy, there was a Section which dealt with consensual relationships to the effect that when there was a consensual romantic and/or sexual relationship between an employee who has supervisory authority and an employee who does not, that relationship should be made known to the Human Resources Manager for certain actions to be taken so as not to affect the enforcement of the sexual harassment policy. Upon being asked if the Dismissed Worker disclosed to the Human Resources Manager of any consensual romantic and/or sexual relationship, Ms. Brown responded that she didn't receive any such report or disclosure.
7. She gave evidence that a verbal sexual harassment complaint was made against the Dismissed Worker in May 2015 of which she made notes of the complaint. After hearing the complaint, Ms. Brown met with the Dismissed Worker on the 21st of May 2015 which was 1-2 days after the complaint was brought to her attention. While speaking with the Dismissed Worker, she also made notes of his response to the complaint. In the Dismissed Worker's response, he indicated that it was the Complainant who was pursuing him.
8. On the 26th of May 2015, Ms. Brown stated that she sent an email to the Dismissed Worker with a request to submit his complaint in writing as she wanted to resolve the matter. It is Ms. Brown's evidence that the Dismissed Worker responded, she believed on the same day, that he didn't have a complaint against the Complainant but outlined work-related issues he had with her. This included the Complainant asking him if he was involved with females who visited his desk. In addition, he highlighted instances where the Complainant would go to his desk seeking assistance which could be dealt with by her immediate supervisor. In response, he would re-direct her to her supervisor but she would return to her work station instead. In doing that, the frequency of the Complainant visiting his desk reduced. Later on in her evidence, Ms. Brown testified that in response to aforementioned email she informed him that there was no mention of the Complainant showing a liking towards him.



9. Ms. Brown gave evidence that the Dismissed Worker did not tell her he had text messages from the Complainant to prove that she (the Complainant) was the one pursuing him by seeking him out at various events. She stated that the Dismissed Worker only told her that the Complainant was pursuing him. She further denied any conversation with the Dismissed Worker where he told her that (a) he and the Complainant used to communicate outside work via text messages, (b) he cut off communication with the Complainant and that's why she is being vindictive, (c) the Complainant texted him threatening that she was going to sink him, and (d) he shouldn't worry about anything since he and her (Ms. Brown) went far back.

10. On the 27th of May 2015, while Ms. Brown was in a meeting the Complainant and another employee visited her office to speak with her. She held a meeting with them and made notes of their complaints as they had additional information. The other employee, *hereinafter referred to as Complainant #2*, complained that the Dismissed Worker mispronounced her last name with a sexual connotation attached and called her derogatory names because of her mixed ethnic background. After the meeting, Ms. Brown sent an email to the Dismissed Worker and held a meeting with him concerning the complaints mentioned in the earlier meeting with the two (2) employees. She also made notes of what transpired in the meeting with the Dismissed Worker and informed him that she was of the view that a formal hearing was necessary. Ms. Brown asked him if tomorrow the 28th of May 2015 at 2:30pm was convenient which she testified that the Dismissed Worker was in agreement. She drafted and handed him a charge letter which included an invitation to a hearing to be held on the 28th of May 2015. The Dismissed Worker signed the charge letter and left it on her desk.

11. On the 28th of May 2015, the disciplinary hearing was called to order and the Dismissed Worker was asked about his representative which he responded that he didn't have one. She told him that he should have informed them via email and they would have rescheduled the hearing instead of wasting everyone's time. The Dismissed Worker got upset and stated that he was aware of the process for a hearing. He also stated that he felt victimized and will contact his Attorney. The hearing was adjourned on that basis and Mr.



Jake Becker, Vice-President of Operations, then told him to provide a date and time depending on his representative's availability.

12. Ms. Brown testified that on the 29th of May 2015 the Dismissed Worker came to her office questioning why the employees were accusing him of sexual harassment and to express his displeasure in how he was spoken to in the hearing in front of his subordinates. Ms. Brown said that she told him that if he didn't do anything wrong then he had nothing to worry about and apologized if he felt offended by how she spoke to him. The Dismissed Worker also sent an email detailing his concerns. On the same day, 29th of May 2015, Ms. Brown requested for the Complainants to report to the Human Resources lobby to put their complaints in writing and to submit it to the Human Resources Department.

13. On the 1st of June 2015, Ms. Brown gave evidence that she received a call from Mr. Jake Becker, Vice President of Operations who informed her that the Dismissed Worker came to his office and told him that he was ready to have the hearing. After speaking with Mr. Becker, Ms. Brown called the Dismissed Worker to her office. The Dismissed Worker went to her office and they spoke about the conversation she had with Mr. Becker. During that conversation, the Dismissed Worker confirmed that he was ready for the hearing. Ms. Brown informed him that the hearing could not occur on that day and the next day, 2nd of June 2015 was proposed. The Dismissed Worker accepted the date and a letter was drafted containing the hearing date and the charges. The Dismissed Worker took his copy and requested for it to be emailed to him as well.

14. Ms. Brown in evidence stated that she issued and emailed the invitation letter outlining the charges dated the 1st of June 2015 to the Dismissed Worker as requested. She confirmed that it was the only document given to him prior to the hearing. She further testified that the Dismissed Worker responded to aforementioned email with a list of persons who she could meet as they could attest to whether or not he was guilty of the offence(s). She indicated that she spoke with a few of them but didn't think it prudent to have them called to the hearing. Ms. Brown also stated that the Complainant told her that she had persons who could vouch for her but those persons were not called to the hearing.

15. With regards to an investigation, Ms. Brown testified that there was no investigation in the initial stage but one was eventually conducted by her upon the Dismissed Worker's request on the 1st of June 2015. Ms. Brown in her evidence confirmed that the hearing was held without completing the investigations as the last person she interviewed was leaving her office at the same time the Dismissed Worker was entering for the hearing. She also stated that she received the written reports from the Complainants on the 2nd of June 2015 after the hearing ended.

16. The hearing was held on the 2nd of June 2015. Ms. Katriana Giles chaired the hearing via teleconference. Ms. Giles was the person who handled all sexual harassment hearings and was based at the corporate office in Pennsylvania. Ms. Brown indicated that she remained in the hearing upon the request of Ms. Giles. She testified that she took the minutes of the hearing and made comments in the hearing when asked. In answering questions by the Panel, Ms. Brown further stated that Ms. Giles called the meeting to order but she was the one who indicated to the Complainant and the Dismissed Worker to proceed.

17. The persons present at the hearing were: Mr. Morris (the Dismissed Worker), Rosetta Malcolm (the Dismissed Worker's Representative), Jake Becker, Samantha Brown, Katriana Giles (via teleconference) and the Complainant. During the said hearing, the complainant spoke at length. When the Complainant was finished, Ms. Giles asked Ms. Brown what was happening. Ms. Brown testified that she told Ms. Giles that the complainant was finished speaking and it was now the Dismissed Worker and his representative's time to speak. The Dismissed Worker then asked where he should begin. Ms. Brown stated that she told him to begin with what was in his charge letter.

18. The Dismissed Worker spoke on what the Complainant said earlier in the hearing by explaining what took place and what did not take place in his defense. On the second charge, Ms. Brown stopped him and informed him that he should ignore it because Complainant #2 decided not to participate in the hearing. The Dismissed Worker continued his defense by stating that he did not send the Complainant any inappropriate messages. Ms. Brown gave evidence that the Dismissed Worker did not question the Complainant during the hearing and he was not prevented from doing so.



19. Ms. Brown gave evidence that the Complainant then stated that majority of the messages were deleted but her phone backed up a few of the messages and voice notes. The messages were read and voice-notes played in the presence of the Dismissed Worker for the 1st time. It was confirmed by all who were present, including the Dismissed Worker, that it was the Dismissed Worker's voice and telephone number. When asked if she (Ms. Brown) had the voice-notes and text messages prior to the hearing, she responded that she read and heard them prior to the hearing but did not have them.
20. Ms. Brown stated that the Dismissed Worker did not ask for any evidence prior to the hearing. It is her evidence that the Company does not normally proceed with a hearing without written evidence being provided to the accused employee before the hearing. In this case, she had spoken to the Dismissed Worker twice to discuss the complaints and because the Complainant was going to be a part of the hearing she didn't think that he would be at a disadvantage. She also stated that she didn't suggest to the Dismissed Worker for Ms. Rosetta Malcolm to be his representative because Mr. Becker and Ms. Giles would listen to her as she was a part of the management team.
21. On the 3rd of June 2015, the hearing resumed and all were present with the exception of the Complainant. Ms. Brown gave evidence that Ms. Giles made the decision to terminate the Dismissed Worker and that the decision was based on what transpired in the hearing held on the 2nd of June. She further testified that the termination letter was emailed to her by Ms. Giles. She inserted her name at the signature line of the letter and delivered same to the Dismissed Worker unsigned.
22. There was a request for an appeal of the decision to terminate the Dismissed Worker's services via email which was granted. The appeal was conducted by Ms. Missy Farnschlader who was the Corporate Vice-President of Human Resources. The grounds of the appeal were (1) the Aggrieved was not prepared, (2) the Aggrieved was not allowed to question the accuser, (3) the Aggrieved was not allowed to choose his representative in full freedom and (4) the Aggrieved was not provided with any charge and the evidence the Company had, et cetera, to take to his representative.



23. The second witness was Ms. Katriana Giles, who is now retired. She testified that she was the Human Resources Director for the call centers in the United States of America, Canada and Jamaica at the time. With regards to the call center located in Jamaica, her functions included directing and overseeing the employees in the Human Resources Department, working with the management team and providing all corporate directions to the local team.
24. Ms. Giles gave evidence that she knew Mr. Morris as he was a part of the management team at the Company. When she first met him, he was a Call Center Manager and later demoted to Assistant Call Center Manager. When she retired in May 2016, he was no longer an employee at the Company as she terminated him for sexual harassment.
25. Ms. Giles stated that she travelled to Jamaica to conduct sexual harassment training each year. At these training sessions, the Dismissed Worker was present and actively participated in the sessions. Ms. Giles gave evidence that this incident was not the Dismissed Worker's first case of sexual harassment. She stated that he was demoted because he undermined management and was moved to another department. She explained that on the 15th of February 2015, a number of employees made complaints concerning him and his supervisors that they touched them and pulled their hair. The result of the said complaint was that she wrote a corrective action for the Dismissed Worker and someone else wrote the corrective actions for the supervisors. The corrective action was a template she created for the various call centers she oversaw to correct employee behaviour and help them succeed. In response to the corrective action, she testified that the Dismissed Worker had a tantrum and refused to sign it as he stated that it would hurt his reputation. It was agreed that the corrective action would be amended to state that he did not report sexual harassment conduct of his supervisors. At that point, the Dismissed Worker signed the corrective action.
26. She explained that two (2) employees went to the local Human Resources Department and made a complaint against the Dismissed Worker. As a result, Ms. Brown was the person who charged the Dismissed Worker as charging an employee was an administrative duty. She got involved in the matter at the disciplinary hearing stage where she chaired the



hearing via teleconference. Ms. Giles gave evidence that there was an attempted hearing where the Dismissed Worker did not have a representative. As such, the hearing was cancelled. At the rescheduled hearing, Ms. Giles stated that she also chaired it via teleconference. During the hearing, she allowed the Complainant to speak after which there was silence for a few minutes. She asked Ms. Brown what was happening and Ms. Brown responded that the Complainant had finished. She further stated that it was hard to chair the meeting without seeing the persons so Ms. Brown assisted her by telling her what was going on while the hearing progressed.

27. She testified that the Dismissed Worker was given the opportunity to speak in which he said a lot. She stated that at first he denied sending any messages to the Complainant or calling her. It is Ms. Giles's evidence that the Dismissed Worker stated that it was the Complainant who was pursuing him. It was at that point the Complainant interrupted him stating that he was lying and she had proof. Ms. Giles, then, indicated to Ms. Brown for them to hear what the Complainant had to say. The messages were read by someone in the hearing room whom she believed was Ms. Brown. Ms. Giles stated that they were upsetting, vulgar and threatening in nature. A response was sought from the Dismissed Worker in which there was silence. She asked Ms. Brown what was happening and Ms. Brown responded that the phone was being passed around so that all present in the hearing room could view it. She further testified that it was what transpired in the hearing that led to Mr. Morris's termination.

28. On the 3rd of June 2015, the termination letter was handed to the Dismissed Worker. She stated that she pointed out to him how upsetting it was that he had done such an act after being trained by her over the years. She gave evidence that the Dismissed Worker then begged for a second chance as it was his first offence. Ms. Giles testified that she wrote the termination letter. Later on in her evidence, she stated that she may have passed on the duty of terminating managers and assistant managers to Ms. Brown.





THE COMPANY CONTENTIONS

- a) The Dismissed Worker committed the offence of sexual harassment based on the evidence presented at the disciplinary hearing and the Dismissed Worker's admission of guilt.
- b) The offence of sexual harassment constituted gross misconduct which warranted dismissal for a first (1st) offence.
- c) The Dismissed Worker's credibility be placed in question and his evidence should not be relied upon by reason of untruths and contradictions.
- d) The Company faithfully followed the Labour Relations Code in setting out the charges in writing, giving the Dismissed Worker the opportunity to be accompanied by a representative of his choice and affording him an opportunity to appeal.
- e) The Company asks the Tribunal to find that the Dismissed Worker was justifiably dismissed.

THE DISMISSED WORKER'S CASE

29. Mr. Howard Duncan, the Dismissed Worker's representative, adduced documentary evidence and made oral submissions in support of their contention that the Company's decision to terminate the Dismissed Worker's contract of employment was unfair and unjustifiable.
30. Mr. Morris testified in examination-in-chief that he worked at the Company as an Agent Collector on the night shift in December 1999. He excelled in his duties and was promoted to Supervisor two (2) years later. He continued to excel and in five (5) years was promoted to Department Manager. Sometime thereafter, he received another promotion to the position of Call Centre Manager. As Call Centre Manager, the Company received rapid growth from a new project namely AT&T where they increased the number of employees from twenty-five (25) to three hundred and fifty (350) in six (6) months. He further stated that he brought some of his senior agents with him on that project and promoted them to

supervisors. In relation to being demoted, he gave evidence that he was transferred and not demoted to Assistant Call Centre Manager because there was need for strong management at the Assistant Call Centre Management level and his salary remained the same. When transferred, the position of Call Centre Manager was given to someone with seniority in experience.

31. Concerning the incident which occurred in March 2015, the Dismissed Worker denied any involvement where a corrective action was placed on his file. He testified that he was in Minnesota for a training when the incident occurred. When he returned to work he heard of the matter which involved one of his supervisors. There were complaints about him touching chairs as he walked by. The Dismissed Worker stated that he held a meeting with the Supervisor to ascertain whether the allegations were true. He informed Ms. Giles that the Supervisor denied the incident. He testified that Ms. Giles requested a meeting with him and the Supervisor. However, the Supervisor continued to deny the incident and requested proof. After the meeting, Ms. Giles called him (the Dismissed Worker) to express how disappointed she was in him for not controlling his supervisor and his inability to make him sign the corrective action. The Dismissed Worker stated that he was not disciplined for the matter.

32. Mr. Morris gave evidence that he had a good relationship with the Human Resources Manager Ms. Samantha Brown and considered her a friend. They attended the Colbourne College together where he assisted her with transportation. He testified that as a result of their close relationship, he spoke to Ms. Brown about the situation with the Complainant that she was pursuing him. He also shared this information with his Manager Mr. Darren Mattson and Jake Becker that the Complainant was pursuing him. He further stated that he did not specifically state that he was in a relationship with the Complainant as one can communicate about a consensual relationship without even saying it.

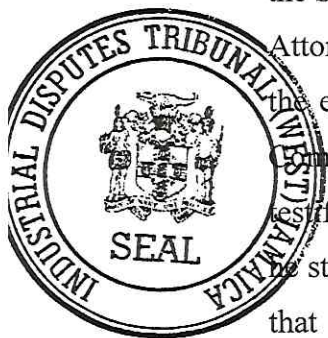
33. He testified that he didn't speak to the Complainant until they met at a bottle party. It was at that event the Complainant started to make advances towards him. At the end of the said event, they exchanged telephone numbers so that he could confirm that she reached home safely. After that date, the Dismissed Worker and the Complainant continued



communicating via text messages. He gave evidence that he showed Ms. Brown text messages from the Complainant about the Complainant's intention to sink him before the 1st hearing held on the 29th of May 2015. It is Mr. Morris's evidence that Ms. Brown in response to reading the text messages informed him not to respond to her. He further testified that he used the pseudo name "Byson" derived from work in the text messages.

34. He stated that a disciplinary hearing was scheduled for the 29th of May 2015. At the hearing, Ms. Brown, Ms. Giles and Mr. Becker were pressuring him when he appeared without a representative. He stated that they told him he needed a representative and questioned how he came to the hearing without one. He informed them that he was not able to reach his representative, Mr. Howard Duncan. As a result, the hearing was adjourned. He further stated that they continued to insist on him giving them a date so that they could reschedule the hearing. He became frustrated by the way they were treating him and left the room. He went to his work station and sent an email about how he felt in relation to how they treated him in the hearing while the Complainant was present.

35. On Monday the 1st of June 2015, he went to Ms. Brown's office after noticing that she didn't respond to his email about the hearing held on the 29th of May 2015. Based on their good relationship, he wanted to speak with her face-to-face to ask her why she treated him in such an unprofessional manner. He gave evidence that Ms. Brown apologized and said that Mr. Becker was pressuring her to conduct the hearing as quickly as possible. It was at that point that Ms. Brown mentioned that he should use Rosetta Malcolm as his representative. He responded to Ms. Brown that Mr. Duncan was his representative. He testified that while contemplating about his representation, he recalled the incident with the Supervisor where he (the Supervisor) informed Ms. Giles that he was going to seek an Attorney with regards to a disciplinary matter. He further recalled Ms. Giles responded to the effect that if he were to seek outside counsel he should see himself outside of the company. Based on that he decided to use Rose Malcolm as his representative. He testified that he didn't choose Ms. Malcolm as his representative. Further in his evidence, he stated that he didn't inform Mr. Duncan about the hearing held on the 2nd of June and that Mr. Duncan was retained as his representative after he was terminated. He also

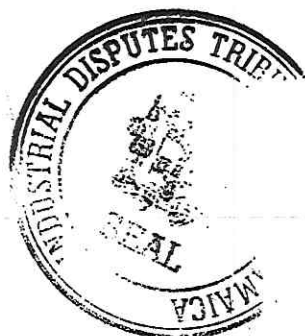


testified that he did not ask for an adjournment for Mr. Duncan to be present at the hearing on the 2nd of June.

36. An email between Ms. Brown and Ms. Rose Malcolm (Exhibit 15(b)) was presented to the Dismissed Worker where Ms. Rose Malcolm stated that she was asked to be his representative on the 29th of May 2015 with the expectation that the hearing would be on the 1st of June 2015 at 2 p.m. The email further stated that the Dismissed Worker had discussions with Ms. Malcolm about the matter and that he told her he went to the Human Resources Department the day before for a meeting which turned out to be a disciplinary hearing and was expected to bring a representative. The email also stated that he reached out to her (Ms. Malcolm) on Monday the 1st of June 2015 to meet him at Human Resources Department. Upon his arrival, he advised her that the hearing was not on that day and he will tell her the date and time. The Dismissed Worker denied the contents of the Exhibit.
37. While he was still in Ms. Brown's office on the 1st of June 2015 after 2pm, he received a letter which outlined the charges against him and invited him to a hearing on the 2nd of June 2015. He received a hard copy of the letter and the soft copy was sent to his email. He stated that that was the only document he received prior to the hearing. Upon receiving the soft copy of the document, he started to make bullet points in his response to refute the allegations and listed the names of the persons who could vouch for him. He, then, sent the email to Ms. Brown and Ms. Rosetta Malcolm.
38. Mr. Morris stated that Ms. Brown chaired the disciplinary hearing on the 2nd of June 2015. At the beginning of the hearing, Ms. Brown did a roll call of all the persons present for Ms. Giles who joined via teleconference. The Complainant was allowed to speak first. He stated that she (the Complainant) spoke about her interview with the Company. In the said interview, she stated that it was the Dismissed Worker who interviewed her. She mentioned a Supervisor, who called her names but there was no mention of sexual harassment, any text messages or communication between them nor that she was the one who pursued him.



39. Mr. Morris testified that he was not given an opportunity to question the Complainant during the hearing. When it was his time to speak, he didn't know where to start because most of what the Complainant spoke about had nothing to do with the five (5) charges laid against him. Ms. Brown told him to *"follow your paper that you sent- that you prepared from"* referring to his response to the email with the charge letter and invitation to the hearing that was sent the day before. He started to state his case but was not allowed to finish as he was interrupted. When he reached the 2nd charge, Ms. Brown stopped him and told him to skip that one and move on to the next one as Complainant #2 was not participating in the hearing. Ms. Brown informed him to also skip the 3rd and 4th charges. He moved on to the 5th charge which she read to him. She asked him if he sent the Complainant inappropriate text messages which he responded no.
40. The same question was posed to the Complainant in which she responded that her phone crashed but she was able to save some of the messages. He gave evidence that Ms. Brown asked her (the Complainant) if she had the text messages. The Complainant unlocked her phone and showed them to Ms. Brown. Ms. Brown then showed it to Mr. Becker and Ms. Malcolm. Ms. Malcolm passed the phone to him to view but he was not given a chance to view the text messages because Mr. Becker took the phone from him. It is Mr. Morris's evidence that Mr. Becker played the voice notes and a debate occurred between Ms. Malcolm and himself (Mr. Becker) as to who was the male in the voice note. Ms. Malcolm was of the view that it was not the Dismissed Worker while Mr. Becker insisted that it was him using profanity in his responses. He then stated that Mr. Becker indicated that he didn't want to hear anything from the Dismissed Worker and returned the phone to the Complainant. The Complainant was then asked to exit the room. The hearing lasted for approximately forty-five (45) minutes. When the meeting was coming to an end, there was some connectivity issue with Ms. Giles. The Dismissed Worker gave evidence that Ms. Brown informed Ms. Giles that the meeting had ended and she would call her afterwards. The Dismissed Worker was informed to return on the 3rd of June for the result of the hearing.



41. On the 3rd of June 2015, the Dismissed Worker went to the scheduled meeting where Ms. Malcolm, Mr. Becker and Ms. Brown were already present. Ms. Brown showed him the Minutes from the hearing held on the 2nd of June 2015 which she drafted. After reviewing the Minutes, he indicated his disagreement with it as he was of the view that it didn't capture everything that transpired in the hearing. Mr. Morris stated that he didn't deny sending text messages and voice notes during the hearing. He had an issue with the Minutes stating that he said he didn't send inappropriate messages. He requested an amendment to remove the word inappropriate. He testified that Mr. Becker asked Ms. Brown if making an amendment to the Minutes would change the outcome in which Ms. Brown responded no.

42. Later on in his evidence, the Dismissed Worker testified that he had another issue with the minutes to the effect that the Minutes didn't capture his disclosure of the relationship between himself and the Complainant. He stated that he placed his concerns in writing on the blank sheet of paper provided to him by Ms. Brown but didn't request for it to be included in the Minutes. He denied having a conversation with his representative to the effect that he forgot that he sent those messages and that he must have been under the influence as captured in the Minutes. He also denied saying that he knew he was at fault and wanted to apologize to the Complainant.

43. The Dismissed Worker testified that he was asked to be excused from the room while Ms. Brown made the amendment. He returned to the office approximately five (5) minutes later and was asked to hurry up and sign the amended Minutes. He was not given an opportunity to review the amendment. He signed the Minutes and was then told by Ms. Brown that his employment was terminated. He stated that he waited in the office while Ms. Brown typed and printed the termination letter which she handed to him. He objected to the termination on the basis that he was not given an opportunity to question the Complainant.

44. A request for an appeal was prepared by the Dismissed Worker's representative, Mr. Duncan. The Dismissed Worker testified that there were grounds of appeal in the said request. When asked if the failure of the Company to take into consideration the disclosure



of the consensual relationship between himself and the Complainant was one of the grounds, the Dismissed Worker responded that it was not captured in the request.

45. The Dismissed Worker expressed his reluctance in describing his association with the Complainant as a relationship. He was asked if, prior to the hearing, he told Ms. Brown, Mr. Becker or Ms. Giles that he had sexual contact with the Complainant which he responded no. He was then asked if he had mentioned that he had sexual contact with the Complainant at the appeal hearing which he responded no. He was further asked if he is now telling the Tribunal that he had sexual contact or was in a consensual relationship with the Complainant which he responded yes.

46. He also stated that he was aware of the Company's policy which requires disclosure of romantic relationships within the workplace involving a senior employee in a supervisory position and a junior employee. He stressed that there wasn't a formal way of disclosure and it was a policy not adhered to by employees. He then stated that he adhered to the policy when he told Ms. Brown, Mr. Becker and Mr. Mattson about the relationship prior to the hearing. He further testified that text messages of a sexual nature would not be considered inappropriate between a superior and subordinate if a consensual relationship was declared to the Company as was his relationship with the Complainant.

47. Mr. Morris testified that it has been difficult for him after being terminated from the Company. He sought employment at numerous organizations but has been unsuccessful after background checks were conducted by the organizations. He is currently employed for approximately two (2) years where he is earning less than half of what he was earning when employed at the Company.

DISMISSED WORKER CONTENTIONS

- a) He was terminated without due process. He was not allowed to have a representative of his choice, right to a defense and the right to face his accuser.
- b) He was not allowed adequate time to prepare his defense as the hearing was held 24 hours after receiving notice of the date and time of the disciplinary hearing.



- c) He was not provided with any evidence prior to the disciplinary hearing in order to prepare his case.
- d) He was not provided a fair disciplinary hearing. He was not allowed to cross examine his accuser during the disciplinary hearing. As such, the principle of natural justice as well as the strict tenets of procedural fairness were not followed.
- e) The process showed bias as the Human Resources Manager, Ms. Samantha Brown played a number of roles.
- f) He contends that he was not guilty of the offence and was terminated in breach of the Labour Relations Code and principles of natural justice.
- g) He asked that the Tribunal finds that his termination was unfair and unjustifiable and that he re-instated.

THE TRIBUNAL'S RESPONSE AND FINDINGS

48. The Tribunal, after careful examination of the evidence adduced by both parties to the dispute, must determine whether the Company was justified in the termination of Mr. Morris's employment.

49. The evidence presented to the Tribunal confirmed that there was a sexual harassment policy in place at the Company. The Tribunal accepts that the Dismissed Worker was aware of the said policy and he participated in the sexual harassment trainings provided by the Company. In determining whether the Dismissed Worker breached the sexual harassment policy of the Company, the Tribunal accepts that the Dismissed Worker was at a managerial position and the Complainant was his subordinate. Within the sexual harassment policy it states that:

"Sexual Harassment is one kind of discriminatory harassment. Sexual harassment can be defined as unwelcomed sexual advances for sexual favours and other statements or actions of a sexual or gender-based nature... At time, consensual





romantic and/or sexual relationships between co-workers may occur. When such a relationship is between an employee who has a supervisory authority and one who does not, Alliance One's ability to enforce its policy against sexual harassment can be affected. Therefore, if such relationships arise, they will be considered carefully by Alliance One officials and appropriate action will be taken. Such action may include a change in the responsibilities of the individuals involved in such relationships or transfer of location within Alliance One. Any supervisory employee involved in such a relationship is required to report the relationship to his or her supervisor and to the Human Resources Manager."

50. The Dismissed Worker did not deny sending messages of a sexual nature to the Complainant. He was of the view that the said messages were not inappropriate if the individuals were in a disclosed consensual relationship in accordance with the Company's policy. This raises the question of whether the relationship was disclosed. The Dismissed Worker, in his examination-in-chief, was very detailed in how he relayed the Complainant's pursuit of him during and outside of work. He testified that he declared such pursuit to Mr. Becker, Mr. Mattson and Ms. Brown.
51. The Dismissed Worker admitted that he was in a relationship with the Complainant and that it was declared to his superiors. In making such declaration, he stated that there wasn't a formal way of doing it and when it was done it was not coined as a relationship specifically. This was evident from his reluctance in labelling the association as a relationship throughout his evidence. He then stated that he was not in a relationship with the Complainant but they had sexual contact. In determining whether the sexual contact was declared, the Dismissed Worker made contradictory statements. On the one hand, he stated that it was declared to his Manager and the Human Resources Manager, Ms. Brown. On the other hand, he stated that it was not declared prior to the disciplinary hearing nor the appeal hearing but that it was before the Tribunal that such a declaration was made.
52. It is the Tribunal's position that the term used is inconsequential as the Company's policy captured both romantic and sexual relationships. The Tribunal accepts the evidence of the

Dismissed Worker and the Company's witness Ms. Brown that the Dismissed Worker declared the Complainant's pursuit of him. When the pursuit deepened into a romantic and/or sexual relationship, the Tribunal finds that the Dismissed Worker failed to declare it in accordance with the Company's policy.

53. Based on the evidence presented and the aforementioned findings, the Tribunal finds that the Company had sufficient evidence at the material time to find that the Dismissed Worker breached the sexual harassment policy.

54. In considering the matter of procedural fairness during the disciplinary process, the Tribunal is tasked to look into the Company's dealings with the Dismissed Worker. The Dismissed Worker's contract was terminated for disciplinary reasons and therefore section 22 of the Labour Relations Code is applicable.

55. The often quoted rules of natural justice recognized by the Court are set out below:

(a) Audi Alteram Partem- the Accused has a right to be heard.

This requires that the accused should be allowed a disciplinary hearing for him to put forward a defence against the charges laid against him. In doing so, the Dismissed Worker should be allowed the right to representation of his choice to assist him in his defence. In the instant matter, the Dismissed Worker gave contradictory evidence in relation to his representative in that he initially stated that he retained the services of Mr. Duncan prior to the hearing and that he was not able to choose his representative in full freedom. He further stated that Ms. Brown pressured him to choose Ms. Rosetta Malcolm as his representative. He then admitted that he was unable to get in contact with Mr. Duncan by telephone prior to the 1st hearing which was adjourned. When he tried to contact Mr. Duncan before the 2nd scheduled hearing Mr. Duncan was busy. He further admitted that he retained Mr. Duncan's services after his termination.

Taking into consideration all of the evidence, the Tribunal finds that Ms. Malcolm's services was requested by the Dismissed Worker in full freedom.



(b) A man should not be a judge in his own cause

This requires that the procedure should show impartiality and be presided over and/or managed by persons who will be fair and objective, and certainly not a part of the institution which is making the accusation or bringing the charges against the accused. In the instant case the Tribunal notes the numerous roles played by the Human Resources Manager, Ms. Samantha Brown. Ms. Brown was the person who proffered the charges against the Dismissed Worker and invited him to a disciplinary hearing. It was the same Ms. Brown who conducted the investigations the day before the scheduled hearing.

In the disciplinary hearing, it was submitted by the Dismissed Worker's representative that Ms. Brown chaired the hearing and not Ms. Giles. The Tribunal finds that Ms. Brown co-chaired the hearing with Ms. Giles who joined via teleconference. Ms. Brown's role was to be the eyes of Ms. Giles who was unable to attend physically. Ms. Brown took it further by taking the minutes of the hearing, asking questions of the Dismissed Worker and the Complainant while giving directions as to the how the hearing flowed.

Finally, Ms. Brown along with taking the minutes of the hearing proceeded to terminate the Dismissed Worker. It is the Company's submission that Ms. Brown terminated the Dismissed Worker on the instructions of Ms. Giles. No evidence was provided to prove such instructions. As such, the Tribunal is of the view that the termination was executed by Ms. Brown whose name appeared in the termination letter. In doing so, Ms. Brown acted as judge, jury and executioner as she was involved in every aspect of the disciplinary process.

(c) A person accused or charged should know what case he has to meet

This requires that the person called upon to answer charges, should be informed of such charges well in advance to allow the person time to understand the charges and to seek legal representation or assistance where he feels this is necessary or helpful in determining the charges brought against him/her. In the



instant case, the Company failed to meet this requirement as the Dismissed Worker was given approximately 24 hours to appear for a disciplinary hearing to answer five (5) charges. Further, the Dismissed Worker did not receive any of the evidence used against him prior to the hearing in order to prepare his case. In fact, the written complaint was not received by the Human Resources Manager until after the hearing had concluded and the investigation was not completed as the last person Ms. Brown interviewed walked out of her office the same time the Dismissed Worker walked in for the disciplinary hearing.

56. The Tribunal finds that the Dismissed Worker was not a credible witness as he was vague in his responses and provided contradictory statements throughout his evidence concerning his relationship with the Complainant, whether the relationship was declared to his Manager and the Human Resources Department and his choice of representation. Notwithstanding the Tribunal's finding that the Dismissed Worker was not a credible witness, it also finds that the Company did not follow the rules of natural justice.

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



"A failure on the part of any person to observe any provision of a Labour Relations Code which is for the time being in operation shall not of itself render him liable to any proceedings, but in any proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or a Board to be relevant to any question arising in the proceedings shall be taken into account by the Tribunal or Board in determining that question."

58. Taking into consideration all of the evidence presented, the Tribunal finds that the Dismissed Worker contributed to his termination. Although the Company might have had reasons to terminate the employment of the Dismissed Worker, the Tribunal finds that the procedure that the Company followed and the failure to observe the rules of natural justice in the termination of the Dismissed Worker renders its decision to be unfair. The Tribunal

notes that the Dismissed Worker made concentrated efforts to mitigate his loss in the circumstances.

59. Thus, the Tribunal concludes that the Dismissed Worker was unjustifiably dismissed and awards accordingly.




AWARD

In accordance with Section 12 of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Mr. Alton Morris be compensated in the amount of Eight Million Five Hundred and Eighty Thousand Dollars (\$8,580,000.00) for his unjustifiable dismissal.

DATED THIS 31st DAY OF AUGUST 2022





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Sadeera Shaw
Chairman


.....
Rodcliffe Robertson
Member


.....
Keith Fagan
Member

Witness


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