

**4 Ellesmere Road  
Kingston 10**

IDT 47/2022

October 24, 2023

Permanent Secretary  
Ministry of Labour  
1F North Street  
Kingston

**Attention: Mrs. Colette Roberts Ridsen**

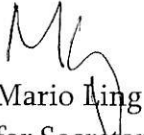
Dear Madam,

**Re: Dispute between American International School of Kingston and Mr. Allan Roper over  
the termination of his employment by reason of redundancy**

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Enclosed, please see Award handed down by the Industrial Disputes Tribunal in connection with the captioned dispute.

Yours faithfully,

  
Mario Ling  
for Secretary/Director

Encl.

**Similar letter sent to:**

Hon. Minister of Labour  
Ms. Gillian Corrodus  
Mr. Michael Kennedy  
Mr. Emile G. R. Leiba  
Dr. Mario Anderson

– Director, Industrial Relations & Allied Services  
– Chief Director, Industrial Relations  
– Attorney-at-Law  
– Attorney-at-Law

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 47/2022

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## SETTLEMENT OF DISPUTE

BETWEEN

AMERICAN INTERNATIONAL SCHOOL OF KINGSTON

AND

MR. ALLAN ROPER

*AWARD*

### I.D.T. DIVISION

MR. DONALD ROBERTS, CD., JP.	-	CHAIRMAN
MR. ERROL BECKFORD	-	MEMBER
DR. DENESE MORRISON, JP.	-	MEMBER

OCTOBER 24, 2023

**DISPUTE NO. IDT 47/2022**



**INDUSTRIAL DISPUTES TRIBUNAL  
AWARDS  
IN RESPECT OF  
AN INDUSTRIAL DISPUTE  
BETWEEN  
AMERICAN INTERNATIONAL SCHOOL OF KINGSTON  
(THE COMPANY)  
AND  
MR. ALLAN ROPER  
(AGGRIEVED WORKER)**

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**REFERENCE**

By letter dated November 25, 2022, the Hon. Minister of Labour and Social Security, pursuant to Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act, 1975 (“the Act”) referred to the Industrial Disputes Tribunal (“the Tribunal”) for settlement, the dispute between **American International School of Kingston and Mr. Allan Roper** with the following Terms of Reference: -

**“To determine and settle the dispute between American International School of Kingston on the one hand, and Allan Roper on the other hand, over the termination of his employment by reason of redundancy”.**

**DIVISION**

The division of the Tribunal selected in accordance with Section 8(2)(c) of the Act to hear the dispute comprised:

Mr. Donald Roberts, CD, 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. Emile Leiba	-	Attorney-at-law
Miss Paulette Neil	-	Attorney-at-law
Mrs. Marsha Johnson	-	Human Resource Coordinator
Mrs. Ingrid Fitt	-	Operations Director

The **Aggrieved** was represented by:

Dr. Mario Anderson	-	Attorney-at-law
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**In attendance:**

Mr. Allan Roper	-	Aggrieved worker
Mrs. Renee Roper	-	Wife of the aggrieved worker



## **SUBMISSIONS AND SITTINGS**

The parties submitted briefs to the Tribunal and made oral presentations over five (5) sittings covering the period July 12, 2023 through to August 30, 2023. Over the course of the sittings the Tribunal examined six (6) exhibits along with testimonies by way of oral evidence.

## **BACKGROUND TO THE DISPUTE**

1. The employer, American International School of Kingston (hereinafter called “the school”) is a non-profit, incorporated company which operates as an educational institution, with offerings of United States and international education programmes, curricula and instructions. The school is opened to students of all nationality, who temporarily or permanently reside in Jamaica. Mr. Roper (hereinafter referred to as “the aggrieved worker”), was employed to the school on a fixed-term contract as the Athletic Director. He was first employed on September 16, 2013, as a Physical Education teacher and through a series of promotions ended up as Athletic Director, the position he held at the time of his dismissal by reason of redundancy on August 1, 2020.



2. Mr. Roper was invited via a June 1, 2020 email to a meeting scheduled for June 2, 2020 at 10:30 am. The subject line of the email referenced: *"Invitation: Allan Scheduling & Contract"*. Mr. Roper enquired as to the context for the meeting, and if there was anything he needed to prepare. He was advised that he need not prepare.
3. The meeting was chaired by Mrs. Susan Canobie, Head of School and included Mrs. Ingrid Fitt, Operations Director representing the HR Department. Mr. Roper was told that due to the impact of the COVID-19 pandemic on the school's operations his position would be made redundant with effect from August 1, 2020.
4. On March 8, 2021 Mr. Roper's attorney wrote to the school contesting the redundancy, arguing that it was not genuine; the school replied outlining the reasons for the redundancy, but this was not accepted.
5. The matter was referred to the Ministry of Labour and Social Security for conciliation. The efforts were unsuccessful, and by letter dated November 25, 2022, the Minister of Labour and Social Security, pursuant to his powers under Section 11 of the Labour Relations and Industrial Disputes Act, referred the matter to the Tribunal for determination and settlement.

### **THE SCHOOL'S CASE**

6. Counsel for the school, Mr. Leiba, referred to the redundancy of Mr. Roper as *"a Covid-19 dismissal."* He said the school was forced to close indefinitely in March 2020 based on the Government's directives regarding the Covid pandemic, and its operations and students' enrollment for the September 2020 academic year were severely impacted. He noted that athletic activities at the school were halted with no clear signs of a return to normality, and as a consequence the school had to make a number of positions redundant, including the position of Athletic Director, held by Mr. Roper.
7. Mr. Leiba said the Tribunal should first satisfy itself that the redundancy was genuine and then to determine whether or not the process was followed. He contended that consultation would not be required in all cases, and that based on the circumstances created by Covid and the qualification of Mr. Roper there could be no possibility of avoiding a redundancy situation.



8. The school's sole witness was Mrs. Ingrid Fitt, Operations Director, who has been employed at the American International School of Kingston for twelve (12) years. Her responsibilities as Operations Director include human resources, finance and overseeing plant facilities.
9. She said that Mr. Roper was first employed in 2013 as a Physical Education teacher on a fixed term contract. He was promoted to the post of Athletic Director in 2017 and also taught two classes in Physical Education. His main activities, she testified, were house programmes, all athletic undertakings, including national and international events, after-school activities, school trips and managing the Physical Education department.
10. Mrs. Fitt confirmed that the school was mandated by the Ministry of Education to close all face-to-face classes in March 2020, and as a consequence it began conducting classes online. She said that some of the international students and their families left Jamaica as a result of the closure, and the board decided to take on the task of restructuring the budget.
11. Mrs. Fitt told the Tribunal that the number of students in enrollment for the 2019-2020 academic year, which ended in June, was two hundred and seventy (270), and in 2020-2021, registration was down to two hundred and thirty (230) students, resulting in a financial loss for the school of US\$588,000.00.
12. She affirmed that as a result of the projected fall in income the school took several steps to manage its operations, including cuts in salaries of between five (5) percent and twenty (20) percent, the freezing of salaries, changing the full-time status of some employees to part-time, and completing redundancy exercises for six posts; including the one held by Mr. Roper. She said that among the posts affected by redundancy were four Teacher Assistants, a Student Support Teacher and a Physical Education Teacher. A teacher who held a post in the science department resigned, and the position was not filled. A number of the job functions arising from the redundancies were assigned to other staff members.
13. Mrs. Fitt noted that in the case of the Athletic Director, they were uncertain as to what timeframe existed for a return to normality and since there could be no physical or otherwise sporting activities "*the school took the decision that it would be logical to make that position* ~~redundant~~." She acknowledged that the Board, Head of School - Mrs. Susan Canobie and herself started having discussions in March of 2020, which continued through to June of that





year about possible options for Mr. Roper as Athletic Director, and based on his qualifications did not give consideration to placing him in any other position at the school.

14. Mrs. Fitt admitted that during the discussions with the school board and management in March 2020 about revising the projections for enrollment in light of the pandemic, they had no consultation or communication with Mr. Roper. She however agreed that the circumstances which arose under Covid-19 necessitated the need for more communication with the staff. She further admitted to consulting the labour law but did not explore possible options of a salary cut, nor engaged in any discussion with Mr. Roper about lay-off.
15. She said that once the decision was taken to terminate Mr. Roper by reason of redundancy a meeting was convened online in early June 2020. The invitation to the meeting, via email, was sent by Susan Canobie and Mrs. Fitt confirmed that Mr. Roper had in fact enquired if there was anything he needed to do in preparation for the meeting, and was told no. She said the email inviting Mr. Roper to the meeting was tagged **“contracts and schedules.”**
16. Mrs. Fitt admitted under cross-examination that the school had placed in the newspaper an advertisement for the post of Athletic Director in February 2021, but that the position would not have been filled before August 2021. She said that although the school was still uncertain as to when face-to-face activities would resume, they nevertheless wanted the person at hand in anticipation of a resumption of physical and sporting activities. It was her testimony that the school was allowed to resume face-to-face classes and physical education activities in August 2021, although sporting activities which engaged physical contacts were not permitted.
17. An advertisement for the post of Student Life Director was published in the newspaper in May 2021, which, Mrs. Fitt acknowledged, was similar to that of Athletic Director. She emphasised, however, that the May 2021 advertisement with the change in nomenclature had nothing to do with the communications between Mr. Roper’s lawyer and the school, but arose because of the additional responsibilities added to the position to include an emphasis on field trips both local and international. The post was eventually filled by an employee of the school in August 2022.



18. Mrs. Fitt said she was aware of Mr. Roper's displeasure at the decision to make his post redundant during the June meeting when he indicated that they would hear from his lawyer. She said that at no time did Mr. Roper had discussions with her regarding his concerns about the relationship with Mrs. Canobie.

### **THE AGGRIEVED WORKER'S CASE**

19. Dr. Anderson, counsel for the aggrieved worker, said that it was clear the school did not follow the proper procedures governing redundancy as set out in the Labour Relations Code. He asserted that it is during periods like Covid-19 that communication and consultation become absolutely necessary because of the challenges a worker would experience in finding a job.
20. Mr. Allan Roper was the sole witness who gave evidence in support of his case. He said he began working at the school in September 2013 as a physical education teacher on a two-year contract. He was subsequently promoted to House Co-ordinator in 2016, while still retaining his teaching responsibilities, and then Athletics Co-ordinator. He said his two-year contract has been consistently renewed since his employment.
21. Mr. Roper affirmed that he had a 'testing relationship' with the Head of School, Mrs. Susan Canobie, and had visited Mrs. Fitt's office on several occasion to discuss with her what could be done to fix the relationship.
22. He agreed that the school was constantly looking at ways to continue under Covid, and he was aware that they had taken steps to make a number of positions redundant. He said that when he was invited to the June 2020 meeting, he was taken aback at the decision to make his post redundant and enquired if there was any available alternative that could be pursued to avoid the redundancy. He was told no. He acknowledged that he was not aware of any vacant position at the school that he could fill at the time of his termination.
23. Mr. Roper said that there were 'multiple factors' which caused him to want to challenge the redundancy, but the 'final straw' was when he saw the February 2021 newspaper advertisement for the post of Athletic Director/Activities Coordinator for the school.





24. He admitted under cross examination that at no time did he put in writing his concerns regarding the poor relationship with Mrs. Canobie, and that his first communication with the school after his termination in June 2020 was around February or March 2021.
25. Mr. Roper said he applied for jobs at other teaching institutions after his termination but was not successful. He however started working in July 2020 at K-Ban Hardware in Linstead although his salary was significantly less than at AISK.

### ISSUES

26. In reviewing the evidence, the Tribunal deliberated on the following issues in arriving at its findings:

- a. In determining whether it was a fair dismissal on the grounds of redundancy taking into account all the circumstances surrounding the case;
- b. In particular, to determine whether or not the redundancy process met the threshold requirements as set out under the Labour Relations Code; and

In the event that the Tribunal, in accordance with section 12(5)(c) of the Act, finds the dismissal unjustifiable, what considerations, based on the evidence, should be taken into account in making its decision or award.



### ANALYSIS AND FINDINGS

27. It is important at the commencement of our analysis to factor in the extent to which the Covid-19 pandemic had severely disrupted economies and labour markets globally. Jamaica was not spared. According to a July 2020 STATIN Report, *“the Jamaican economy declined by 18.4 percent and there was a 10.8 percent decline in the number of persons employed as at July 2020 compared to July 2019.”* The Government of Jamaica introduced measures, including the closure of schools, as a consequence of which *“...business and organisations reduced their activities, which resulted in decreased work hours, temporary layoffs and permanent employment termination.”*<sup>1</sup>

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<sup>1</sup> Statistical Institute of Jamaica; Jamaican Labour Market: Impact of Covid-19, July 2020.

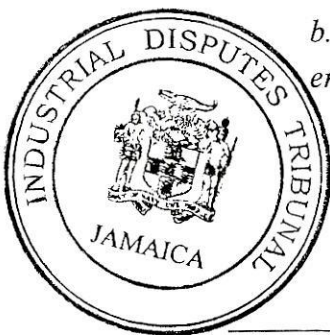
28. It is against this background, aptly referred by counsel as a ‘*Covid-19 dismissal*’, that AISK made the position held by Mr. Roper redundant.
29. Even under these circumstances, we nevertheless remain mindful of the cautionary note from one of the Caribbean region’s noted jurist and international expert on labour standards that employers too often yield to the temptation to “*put international labour standards aside and treat them as not important in times of crisis*”. It is precisely during a crisis, she said, that “*the adherence to proper labour standards assume even greater importance to minimise instability in the future and to safeguard the interest of all, in the world of work.*”<sup>2</sup>

**In determining whether it was a fair dismissal on the grounds of redundancy taking into account all the circumstances surrounding the case**

30. The Tribunal has an obligation to take all relevant matters into consideration to determine and settle disputes between the parties. We believe that would make it incumbent on us to consider the governing legislative scheme and all other laws relevant to the dispute we are mandated to settle. The focus would therefore be, in the first instance, on the Employment Termination & Redundancy Payments Act of 1974, to determine whether or not there was a genuine redundancy situation for us to make a finding on the issue.
31. We are, however, aware that in the last three to five years there has been contending views in the courts of coordinate jurisdiction on matters relating to redundancy. The case of **Cable & Wireless Jamaica Limited v. IDT and Winston Sewell [2020] JMSC Civ. 25**, for example, was a matter in which the court was called upon to rule on whether or not the IDT had jurisdiction to hear and settle the dispute surrounding –

*“a. Mr. Sewell’s claim that his contract of employment was terminated on the grounds of redundancy; or*

*b. The company’s claim that Mr. Winston Sewell was separated from his employment on the basis of retirement.”*



<sup>2</sup> Deborah Thomas-Felix, (2021), Labour Law in the Commonwealth Caribbean: The Practice of Good Industrial Relations in the 21<sup>st</sup> Century, p.88



32. Justice Anderson, made the declaration that “...a claim for a redundancy payment and any labour dispute as regards a redundancy payment, does not constitute an, ‘industrial dispute’ within the meaning attributed to that quoted term, in the Labour Relations and Industrial Disputes Act.”

33. A second case involving redundancy was also heard and ruled on by Justice Anderson in the same year. The case of **Chartermagnates v. IDT and Norma Roberts [2020] JMSC Civ. 26**, saw the court quashing the award of the Tribunal in respect of the dispute over Miss Roberts’ redundancy payment. The learned judge in his ruling at the time noted that –

*It is true that the IDT is not bound by the rigours of the common law, but it would be very surprising to me and perhaps even alarming, if the IDT could in exercise of its statutory provisions, expressly disregard the ETRPA’s provisions, in circumstances wherein, their jurisdiction to so, has not been expressly set out, in either the ETRPA or the LRIDA. If that were so, it would then mean that the LRIDA would effectively have repealed the provisions of the ETRPA, as regards matters of redundancy. A general Act, with general provision, cannot be taken as repealing an earlier Act with special provisions pertaining to a special type of situation, for example redundancy, without express words making it clear that the legislature had so intended.*

34. He concluded with the following dictum: “I have [instead] sought to make it clear, that I am of the considered opinion that the IDT does not presently have jurisdiction over redundancy disputes for present purposes, I need go no further”.

35. A third case heard between **Yellow Media (Jamaica) Limited v. the IDT and Ladianne Wade [2020] JMSC Civ. 6**, was again asking the court to quash the award of the IDT made in favour of Mrs. Wade arising from its terms of reference “to determine and settle the dispute between Global Directories (Jamaica) Limited on the one hand, and Mrs. Ladianne Wade on the other hand, over the termination of her employment on the grounds of redundancy.”. The opinion of Wolfe-Reese, J. in this matter was stated thus –

*“It is my view that the IDT having determined that the termination of Miss Wade was justifiable and was on the basis of a redundancy, results in an automatic inference that she would be entitled to compensation. That compensation must be in accordance with the provisions of the Employment Termination and Redundancy Payment) Act. Both Yellow Media Jamaica*





*limited and Mrs. Wade would be subject to all the provisions of the legislation. I therefore cannot agree that the award is compelling Yellow Media Jamaica Limited to calculate and make compensation to Mrs. Wade. I find that there is no evidence that the IDT went outside of their jurisdiction in making the award."*

36. A much earlier and, indeed, seminal ruling by the UK Privy Council, endorsing the award of the Tribunal and the judgement of the Court of Appeal, was the case: **Jamaica Flour Mills v. Industrial Disputes Tribunal & Anor (Jamaica) [2005] UKPC 16 (23 March 2005)**. The matter was over the dismissal by reason of redundancy of three workers at the company. The Tribunal had ruled that their dismissals were unjustifiable and made the following declaration:

(i) *"The workers were effectively dismissed by the company... The stated reason was Redundancy. There was no question of fault or misconduct on the part of the workers;*

(ii) -----

(iii) *It was unfair, unreasonable and unconscionable for the Company to effect the dismissals in the way that it did. It showed very little if any concern for the dignity and human feelings of the workers. This is indeed aggravated when one considers their years of service involved..."*

37. Both the **Jamaica Flour Mills** and the **Yellow Media** cases, we submit, are indistinguishable from the case at bar. But in answering the critical question as to whether Mr. Roper's dismissal was "unjustifiable", it is not necessary for us to delve too deeply into whether or not the provisions of the Employment Termination & Redundancy Payment Act were complied with. If we return to **the Jamaica Flour Mills case [supra]** for example, the Tribunal noted that –

*"Counsel led much cogent evidence justifying the Company's redundancy decision but it is not essential to our decision in this case to make a definitive finding as to the fairness of the Employers' decision that there was a fair case of redundancy and we make none."*



38. The Privy Council in its ruling, noted that the fact the Tribunal did not definitively speak to the lawfulness of the dismissal was of no moment. Their Lordships argued that the *“Tribunal did not definitively decide on the issue of redundancy. Instead the Tribunal addressed themselves to the question whether the dismissals, having regard to the manner in which they were effected, were in any event “unjustifiable...”*
39. The particular nature of this case, however, compels us to reference the provisions of section 5(2) of the Employment Termination & Redundancy Payments Act (ETRPA) in light of the circumstances leading to and subsequently flowing from Mr. Roper’s dismissal to determine, (as Mr. Leiba would want us to do) whether this was a case of genuine redundancy.
40. The relevant section of the ETRPA stipulates that - *“... an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or partly to –*

(a) *The fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or*

(b) *The fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminished; or*

(c) -----“

41. The abnormal and frighteningly unusual circumstances brought on by the COVID-19 pandemic, and the uncertainty as to how long the restrictions and lock-down would have lasted provided adequate and reasonable grounds for any employer to contemplate redundancy. It was the school’s testimony that it had to restructure its budget based on a projected fall in income as a result of the closure. This led to six (6) positions been made redundant (including that held by Mr. Roper), salary cuts were instituted, and changes in the employment status of some employees from full-time to part-time. In the academic year 2020-2021, Mrs. Fitt averred that registration of students fell to 230 from 270 in the previous academic year, resulting in a financial loss of US\$588,000.00.



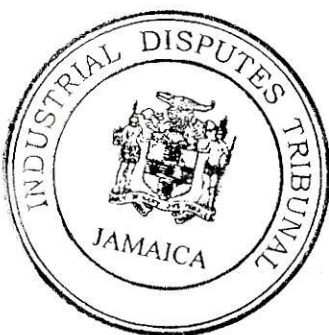


42. While the situation could reasonably be argued to give rise to effecting a redundancy exercise, as in the case of Mr. Roper, we cannot, however, ignore the fact that two advertisements appeared in the newspaper months later, one in February 2021 for an Athletic Director/Activities Coordinator. The job description for the post included the following:

- *“Ensure the delivery of an appropriate, comprehensive, high quality and cost-effective curriculum program which complements the aims of AISK*
- *Coordinate and monitoring and evaluation of the PE Department and after-school activities in line with agreed AISK procedures*
- *Ensure effective communication/consultation as appropriate with the parents of students for both curricular and after-school activities throughout the year.*
- *Prepare a master budget and supervise equipment inventories*
- *Be responsible for the day-to-day management of staff with the PE Department and act as a positive role model”*

43. Upon a cursory examination, not only the title of the job, but the job description itself, mirrored the core functions outlined in Mr. Roper’s job description at the time of his dismissal [see exhibit 1]. In May, another newspaper advertisement surfaced for a Student Life Director, and according to Mrs. Fitt, would have differed from the previous advertisement with the inclusion of “international field trips”. We find Mrs. Fitt’s explanation for the change disingenuous at best, by implying that the Student Life Director was now a different job from the one advertised in February, and certainly different from the position previously held by Mr. Roper. We firmly are of the view that the inclusion of ‘international field trips’ to the May job advertisement was directly influenced by communications received from Mr. Roper’s attorney, contesting the validity of the redundancy.

44. These two advertisements, we submit, cast a shadow on the genuineness of the redundancy at the time, and raise questions as to the real motive behind the decision. What is more, Mrs. Fitt said she consulted with the law governing redundancy, and we presume, with the requirements of the Labour Relations Code, and simply ignored its provisions.





**In particular, to determine whether or not the redundancy process met the threshold requirements as set out under the Labour Relations Code**

45. The second plank for consideration would be far more determinative than simply to settle on whether the conditions brought on by Covid was in line with section 5(2) of the ETRPA. This is so since the procedures and effect of the dismissal are our primary concern. The Labour Relations Code provides the guardrails to protect employers and employees from unfair labour practices, and offers some important considerations to be applied in rendering an opinion on this matter.

46. In the first place, we ought to remember and take note of the expressed purpose of the Code as set out in paragraph 2, which reads:

*“Recognition is given to the fact that the management in the exercise of its function needs to use its resources (material and human) efficiently. Recognition is also given to the fact that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it, ensuring continuity of employment, security of earnings and job satisfaction”*

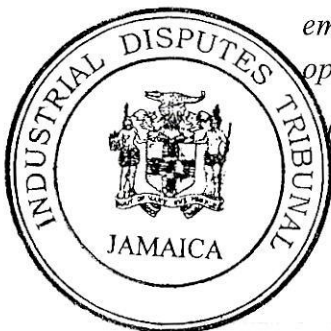
47. A second relates to the application of the Code. Paragraph 3 reads:

*“Save where the Constitution provides otherwise, the code applies to all employers and all workers and organizations representing workers in determining their conduct one with the other, and industrial relations should be carried out within the spirit and intent of the code. The code provides guidelines which complements the Labour Relations and Industrial Disputes Act; an infringement of the code does not of itself render anyone liable to legal proceedings, however, its provisions may be relevant in deciding any question before a tribunal or board.”*

48. Having outline its purpose and application, the Code subsequently addresses the issue of “Security of Workers”. It is out of that provision that the matter as to its procedures and effect can be considered. Paragraph 11 as far as is relevant reads as follows:

*“Recognition is given to the need for workers to be secure in their employment and management should in so far as is consistent with operational efficiency –*

- (i) Provide continuity of employment, implementing where practicable, pension and medical schemes;*





- (ii) *In consultation with workers or their representatives take all reasonable steps to avoid redundancy;*
- (iii) *In consultation with workers or their representatives evolve a contingency plan with respect to redundancies so as to ensure in the event of redundancy that workers do not face undue hardship. In this regard management should endeavour to inform the worker, trade unions and the Minister responsible for labour as soon as the need may be evident for such redundancies;*
- (iv) *Actively assist workers in securing alternative employment and facilitate them as far as is practicable in this pursuit."*

49. While, as counsel argued, there could be exceptions where consultation may not be required, his pleadings did not avail the Tribunal in coming to a conclusion that the circumstances surrounding Mr. Roper's case should be so considered.

50. Not only was there no consultation with Mr. Roper, but the school purposefully engaged in an act of deception when it invited him to the June meeting under the guise of discussing '**contracts and schedules**'. Furthermore, when Mr. Roper enquired if there was anything he needed to prepare for the meeting, he was told "no". Even when he sought to engage in discussions about possible alternatives to the redundancy at the meeting, this was not entertained. Mr. Roper was advised that he would be made redundant for the first time at the June meeting, with the redundancy taking effect on August 1, 2020; but the school had no intention of entertaining any discussion with him about any alternative to redundancy; nor a contingency plan to avoid any undue hardships.

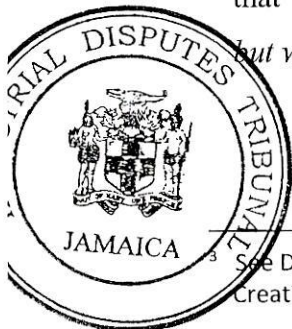
51. The school was aware, according to the testimony of Mrs. Fitt, that Mr. Roper was not pleased with the decision to make his position redundant, for he did advise them that they would be hearing from his lawyer on the matter.

52. We are obliged, in an examination of the circumstances "**broadly and in the round**", to give weight to the facts, and inferences drawn from fact, in respect of the two newspaper advertisements for the position previously held by Mr. Roper. But far more important, is the consideration as to whether the letter and spirit of the Code had been complied with. Both the Statute and Code, in the words of the former President of the Court of Appeal, Justice Carl Rattray, provide this Tribunal with the framework to settle disputes through a new



regime “*constructed with concepts of fairness, reasonableness, co-operation and human relationships*”; concepts which were...” *never contemplated by the common law.*”

53. It is therefore clear on the findings of the Tribunal that the procedure and effect of the redundancy did not comport with the provisions of the Labour Relations Code, from which notions of ‘*fairness, reasonableness, co-operation and human relationships*’ derive their meaning. Furthermore, the common law principles governing these concepts are entirely within the purview of the Tribunal to decide, save and except where they can be proven to be illegal or unreasonable in the Wednesbury sense.
54. In the matter before us there was no consultation with Mr. Roper, no attempt to discuss alternatives to the redundancy, or cushion the effects of the redundancy in the period of crisis brought on by the pandemic. The Code does speak to the meaning of industrial relations beyond procedures to incorporate “human relations”; and it is precisely in a crisis - as we were in 2020-2021 - that good industrial relations practice and humane considerations cannot and should not be abandoned.
55. What is more, when we view the abandonment of the code alongside the school’s deception regarding the purpose of the June 2 meeting, the questionable advertisement of February 2021 and the attempt, as we see it, to disguise Mr. Roper’s previously held position under a new rubric in the May newspaper advertisement, we are wont to conclude that Mr. Roper’s dismissal by reason of redundancy was harsh and unjust.
56. The fact is, within our own Commonwealth jurisdiction, a noticeable increase in the number of unfair dismissal claims during the COVID-19 pandemic have occurred. While there have been legitimate reasons for redundancy during this period, many employers have used the pandemic as an excuse to “cleanse” their workplace, putting many employees at risk of ‘sham redundancies.’ In a recent ILO Conference, it was reported that workers expressed the view that “*their employer is using the pandemic as an opportunity to terminate their employment, but without following the correct procedures for doing so...*”<sup>3</sup>



See Dr. Gabrielle Goldings’ paper on ‘Unfair Dismissal and the Coronavirus Pandemic: Adaptations and Creative Responses from Australia’s Fair Work Commission’, presented at the 7<sup>th</sup> Conference of the



In the event that the Tribunal, in accordance with section 12(5)(c) of the Act, finds the dismissal unjustifiable, what considerations, based on the evidence, should be taken into account in making its decision or award.

57. Both the Act and, by extension, the interpretation of the provision by the Court, offer a potential home for the Tribunal's thinking in respect of awards. Section 12(5)(c)(ii) states that where the Tribunal-

*"...finds that the dismissal was unjustifiable and that the worker does not wish to be reinstated, order the employer to pay the worker such compensation or to grant him such relief as the Tribunal may determine."*

58. In **Garnett Francis v. Industrial Disputes Tribunal and the Private Power Operators Limited** ([2012] JMSC Civil 55, the claimant challenged the compensation awarded by the Tribunal for relief for his unjustifiable dismissal. The learned judge opined that the Tribunal has a wide remit in respect of determining what that sum should be:

*"...there is a discretion entrusted to the Tribunal where the level or quantum of compensation is concerned; and it is a wide and extensive discretion. A reading of the particular sub-paragraph reveals no limit or restriction placed on the exercise of this discretion and no formula, scheme or other means of binding or guiding the Tribunal in its determination of what might be the level of compensation or other relief it may arrive at as being appropriate. There is no basis, therefore, on which to conclude that the level of compensation to be determined by the Tribunal must be exactly proportionate to the period for which the employee has been out of work or that some other similar benchmark should be used. There is no factual, legal or other foundation for saying that the Tribunal erred in that regard. The Tribunal was free to determine what compensation was best, and did so having regard to the existence of both mitigating and aggravating factors on both the employer's side and the employee's side..."*



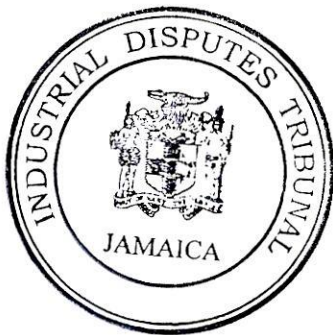
59. But we strive to ensure that whatever decision we arrive at, there is a sense of proportionality and the award seen as reasonable and just. There is no issue before us, and can be none about Mr. Roper's redundancy payment. While the redundancy was announced in June and took effect in August 2020, Mr. Roper sought and obtained employment in July. He received both his June and July salaries from AISK.

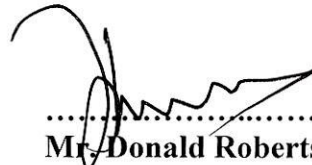
### **DECISION**


60. The Tribunal, in consideration of section 12(5) of the Act makes the following decision:


- a) That the termination of employment by reason of redundancy of Mr. Allan Roper by the American International School of Kingston was unjustifiable;
- b) Order that Mr. Roper be paid the sum of Two Million Two Hundred Thousand Dollars (\$2,200,000.00) as relief for his unjustifiable dismissal.

Dated this 24<sup>th</sup> day of October, 2023




  
.....  
**Mr. Donald Roberts, CD, JP**  
**Chairman**

  
.....  
**Mr. Errol Beckford**  
**Member**

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

**Witness:**

  
.....  
**Mr. Mario Ling**  
**Secretary of the Division**