

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 28/2023

SETTLEMENT OF DISPUTE

BETWEEN

BAKING ENTERPRISES (1988) LIMITED

AND

MS. MARIA GAYLE

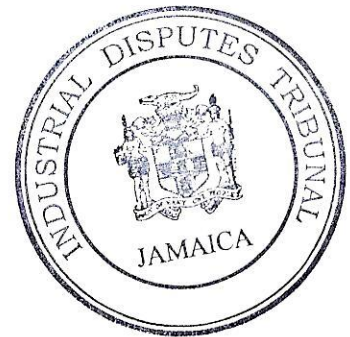
AWARD

I.D.T. DIVISION

MRS. SHARON ANDERSON	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
MR. PAUL HINES	-	MEMBER

DECEMBER 2, 2024

INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
BAKING ENTERPRISES (1988) LIMITED
(THE COMPANY)
AND
MS. MARIA GAYLE
(THE AGGRIEVED WORKER)



REFERENCE:

By letter dated August 29, 2023, 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 for settlement, in accordance with the following Terms of Reference: -

"To determine and settle the dispute between Baking Enterprise (1988) Limited on the one hand, and Marcia Gayle on the other hand, over the termination of her employment"

On August 31, 2023, the Tribunal received a superseding letter from the Ministry of Labour amending the Aggrieved worker's name in the terms of Reference to read **Maria** instead of Marcia.

By letter dated October 3, 2024, the Term of Reference was amended to read as follows:

"To determine and settle the dispute between Baking Enterprises (1988) Limited on the one hand, and Maria Gayle on the other hand, over the termination of her employment."

DIVISION:

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

- | | | |
|-----------------------------|---|------------------------------|
| Mrs. Sharon Anderson | - | Chairman |
| Mrs. Jacqueline Irons, J.P. | - | Member, Section 8(2)(c)(ii) |
| Mr. Paul Hines | - | Member, Section 8(2)(c)(iii) |

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

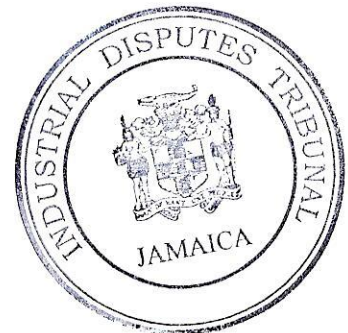
- | | | |
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| Ms. Michelle N. Smith | - | Attorney- at- Law |
| Mrs. Diane Getten-Woolcock | - | Group Human Resources Manager |

The **Aggrieved Worker** was represented by:

- | | | |
|-----------------------------|---|---------------------------------|
| Senator Lambert Brown, C.D. | - | Industrial Relations Consultant |
|-----------------------------|---|---------------------------------|

In attendance was:

- | | | |
|-----------------|---|------------------|
| Ms. Maria Gayle | - | Aggrieved Worker |
|-----------------|---|------------------|



SUBMISSIONS AND SITTINGS:

The parties submitted Briefs to the Tribunal and made oral submissions over thirteen (13) sittings covering the period February 12, 2024 through to August 29, 2024. Thirty-nine (39) Exhibits along with testimonies by way of oral evidence were examined by the Tribunal.

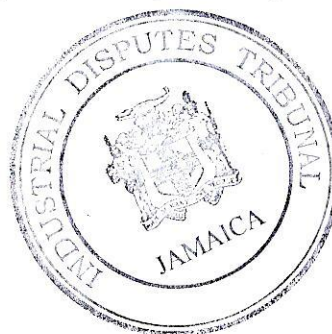
BACKGROUND TO THE DISPUTE:

1. Baking Enterprises (1988) Limited (*hereinafter referred to as the Company*) is in the business of producing, marketing and selling baked goods. Its corporate office is located at 8 St. Lucia Avenue, Kingston 5. The company also operates in several locations outside of Kingston and St. Andrew.

2. On October 1, 2020, the aggrieved worker, Ms. Maria Gayle was employed by the Company in the capacity of Sales Supervisor at the Mandeville Agency in the parish of Manchester in central Jamaica.
3. On the morning of February 4, 2022, Ms. Gayle was handed a letter dated February 4, 2022, by the Group Human Resource Manager, Mrs. Diane Getten-Woolcock terminating her contract of employment. The said letter included an offer to pay Ms. Gayle in lieu of notice which she accepted.
4. Ms. Gayle engaged the services of Senator Lambert Brown Industrial Relations Consultant, who challenged the termination and sought the intervention of the Ministry of Labour and Social Security. No resolution was reached and subsequently the Hon.Minister of Labour referred the dispute to the Industrial Disputes Tribunal for settlement.

THE COMPANY'S CASE:

5. The Company called four (4) witnesses in support of its case.
6. On September 30, 2020, the Company entered into a contract of employment with Maria Gayle for the position of Sales Supervisor at the Company's Mandeville Agency effective October 1, 2020. A term of the contract was that Ms. Gayle would be on probation for a period of three (3) months from the effective date of her employment and if her performance was satisfactory during the probationary period she would be confirmed in the position.
7. Ms. Gayle's direct manager at the Company was Ms. Novea Henry, who at the time was the Sales and Marketing Manager of the Company. Ms. Gayle's direct supervisor at the Mandeville Agency of the Company was Mr. Winston Ferguson, who at the time was the Senior Sales Supervisor at the Company's Mandeville Agency. Ms. Gayle was also supervised by Ms. Meghan Murray who was at the time and still is the Manager of the Company's Mandeville Agency.
8. It is the evidence of Ms. Henry, Mr. Ferguson and Ms. Murray that during Ms. Gayle's probationary period they all had concerns with her performance.



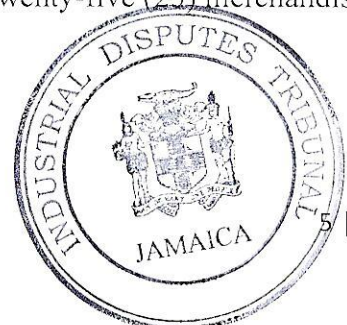
9. Ms. Gayle's performance was appraised by her Manager, Ms. Henry at the end of her probationary period and she was confirmed in the position on January 1, 2021, though her Manager informed her in the appraisal that she was required to make some improvements by May 5, 2021 in the following areas that were set for review:
- (a) Time Management
 - (b) Submission of reports
 - (c) Attitude towards correction
10. Ms. Gayle agreed in her appraisal to work on the goals that were set for her to improve in. However, after her confirmation in the position, both her direct supervisor and the Agency Manager continued to observe that her performance was not improving but was instead deteriorating. Several emails were communicated and discussions had with her regarding her failure to submit required reports on time and or refusal to comply with recommendations/suggestions made to improve her performance.
11. Ms. Gayle's poor performance in the areas she was required to improve upon continued for the entire year of 2021.
12. The Company submitted that performance not meeting its standard falls within the scope of potentially fair reasons for dismissal of an employee. The evidence given by Mr. Ferguson and the emails he sent to Ms. Gayle about her untimely reporting show that the Company had reasonable grounds upon which to believe that Ms. Gayle's performance was not at the Company's standard.
13. Mr. Ferguson's evidence is that he had many verbal conversations on a regular basis with Ms. Gayle about her performance and it was when there was no improvement by her that he started to write her emails which was copied to her Manager, Ms. Henry.
14. On the evidence of Ms. Henry, she confirmed that she received weekly, sometime bi-monthly and some monthly communications from Mr. Ferguson about Ms. Gayle's performance as it relates to gaps in time management. Ms. Henry sent an email on March 19, 2021 to the entire sales team, she manages including Ms. Gayle, that she made special reference to her and another person to take note because they were always late in submitting their reports.



15. Ms. Gayle had knowledge that she was not fulfilling some of her core job functions as this had been consistently communicated to her by Mr. Ferguson through his many emails to her for the entire period.
16. The Company contends that it had probable cause to dismiss Ms. Gayle as she was emailed by her supervisor almost every month since January 2021 up to November 2021, and sometimes twice in one month, about these core functions not being done by her in a timely manner.
17. The Company in its submission asked the Tribunal to find that Ms. Gayle's termination was justifiable as she would have been in dialogue with her manager and direct supervisor on the reason for which she was terminated.
18. The Company also asked the Tribunal that even if Ms. Gayle's termination were to be considered unjustifiable due to procedural irregularity in the way she was terminated, the fundamental issue of the performance of Ms. Gayle of some of her core functions under her job description is still the circumstances and reason why the Company had to terminate her.
19. The Company further requested that if the Tribunal finds the termination of Ms. Gayle unjustifiable, it should not reinstate her, but should instead consider a compensatory award.
20. Finally, the Company requested that should the Tribunal consider a compensatory award consideration must be given as to whether Ms. Gayle had taken adequate steps to mitigate her losses upon termination.

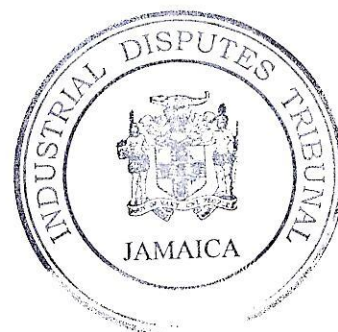
THE AGGRIEVED WORKER'S CASE:

21. The Aggrieved Worker, Ms. Gayle was the only witness called in support of her case.
22. Ms. Gayle started working with the Company in the capacity of a Sales Supervisor on October 1, 2020. She was placed at the Company's Mandeville Agency, in Manchester. Her main functions as Supervisor included, supervising of twenty-eight (28) salesmen and twenty-five (25) merchandisers,



preparing sales reports each month end, training of new drivers and merchandisers, assisting with the interviewing of new drivers, supervising the daily duties of contractors, salesmen and merchandisers, conducting Audits relating to customer balance and invoice, collecting overdue balances from delinquent customers, responsibility for promotion every week, assisting with the process of receiving, storing, rotating and handling to reduce returns and damaged products etc.

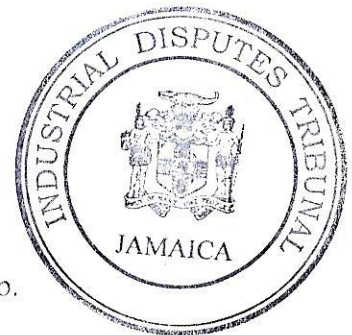
23. On February 4, 2022, Ms. Gayle reported to work as usual; she supervised the work of thirty-seven (37) men before she prepared to go on the road to conduct her month end report.
24. Prior to leaving she had stopped in the passage way for a brief moment to exchange words with another colleague, when she noticed a lady, whom she had never seen before. She was subsequently approached by the said lady who informed her that Ms. Megan Murray wanted to meet with her (Ms. Gayle) in her office. Ms. Gayle immediately headed towards Ms. Murray's office but was told by the said lady to go to the other office. When Ms. Gayle went to the Office she was shocked to see that it was not Ms. Megan Murray in the office, but rather Mrs. Diane Getten-Woolcock, Group Human Resource Manager.
25. Mrs. Getten-Woolcock informed her that she had something for her. Ms. Gayle questioned what it was and was given a letter.
26. Ms. Gayle having read the letter realized that it was a letter of termination. She immediately questioned the reason for her termination. She was advised by Mrs. Getten-Woolcock that she should just sign the letter, as she was sent to do a job and that is what she is doing.
27. Prior to February 4, 2022, there was no meeting held with Ms. Gayle relative to her termination or for any other issue.
28. Ms. Gayle's performance during the period of her employment received positive assessments from her Manager and those whom she supervised. At no time during her employment was she the subject of any disciplinary concerns.



29. In October 2021, the Company conducted a redundancy exercise among sales supervisors, two of whom worked at the Mandeville Agency with Maria Gayle. All Sales Supervisors had the same Job Description. In determining who was to be made redundant, the Company submitted that its decision was based on performance. However, Maria Gayle was not selected.
30. No letter was ever written by the Human Resources Manager to Ms. Gayle regarding her performance prior to her dismissal letter on February 4, 2022.
31. Ms. Gayle during her sixteen months of employment received two increases in her salary along with commendation for meeting quota.

Maria Gayle contended that:

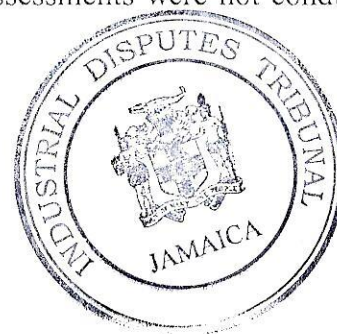
- a. her termination is unfair and unjustified and not in keeping with the Law.
- b. she was placed under duress on the day of her termination, when she was informed to report to Ms. Murray's office, where she was surprised to see Mrs. Getten-Woolcock who handed her the termination letter.
- c. she was denied Natural Justice.
- d. she wishes to be reinstated to her job without any loss of benefits and status.
- e. in the alternative, she should be compensated for the unjustified loss of her job.



THE TRIBUNAL'S RESPONSE AND FINDINGS:

32. The panel in its deliberations gave careful consideration to the evidence presented and asked itself whether the Company acted fairly and reasonably in terminating Ms. Gayle's employment in the manner it did.
33. The evidence before this Tribunal is that the Company entered into a contract of employment with Maria Gayle for the position of Sales Supervisor at the Company's Mandeville Agency effective October 1, 2020. Ms. Gayle was placed on probation for a period of three (3) months with the understanding that if her performance was satisfactory she would be confirmed in the position.

34. After the probationary period ended, Ms. Gayle was confirmed in the position on January 1, 2021. Based on Ms. Gayle's performance appraisal three (3) goals were set for review, time management skills, submission of report and attitude towards correction. Ms. Gayle was assessed on eighteen (18) areas, thirteen (13) of which she scored either very good or good and five were scored fair. The dominant or modal score was very good.
35. Of importance to note is that based on Ms. Gayle's performance appraisal
- 'Very good' means:- thinks through and clearly performs all key job functions according to standards. Errors are few with seldom recurrence. Performs work with minimum supervision and follow up.*
- 'Good' means:- meets required job standards and expectations with minimal supervision. Exceeds expectation in some functions. Errors are infrequent. Requires normal follow up with duties.*
- 'Fair' means:- understands and usually meets job standards or expectations. Requires more than normal supervision and direction. Needs consistent follow-up with work assigned. Some improvement with job functions are required.*
36. It is important to note that none of the scores were rated 'poor'.
37. The Tribunal finds that while the Company brought several emails to support the case of poor performance, only one of the emails was copied to HR and that is the email of March 19, 2021 which was sent to Ms. Gayle among other supervisors where they were officially warned about their failure to meet deadlines including reports and updates. They were informed that failure to meet deadlines would result in a letter being placed on their files. Interestingly, the Company did not state that if Ms. Gayle fail to improve in her performance, her contract may be terminated.
38. Arising from the appraisal goals that the Company claimed were set for review on May 5, 2021 and based on the evidence from her Manager, Ms. Gayle's performance was assessed on a weekly as well as monthly basis leading up to the May 5, 2021. These assessments were not conducted in writing but were done verbally.



39. The Tribunal notes that there was nothing recorded against Ms. Gayle, although three goals were set for review. As a matter of fact, Ms. Gayle when questioned by one of the Members regarding the three goals that were set, had this to say:

Q: *Ms. Gayle, I just want you to clear up something for me, the performance appraisal that you signed that says that there were three areas that you were going to make an effort to improve upon – time management, submission of reports, and attitude towards correction – did the company ever give you any feedback to say whether or not you had satisfied those areas?*

A: *No, I did not get a reply.*

Q: *And did Mr. Ferguson or Ms. Henry say to you that if you did not improve what would happen?*

A: *No*

40. This evidence given by Ms. Gayle was never countered by the Company. The Company's evidence is that Ms. Gayle was consistently communicated to via emails about her performance. The Tribunal therefore finds no evidence to indicate that Ms. Gayle was assessed after the first performance appraisal that was signed on February 5, 2021. In fact, there is not a scintilla of evidence provided by the Company of a feedback with regards to the goals set for review. The emails that the Company sent to Ms. Gayle cannot be classified as a review.

41. Senator Brown in his cross examination asked Ms. Henry the following questions and to which she responded:

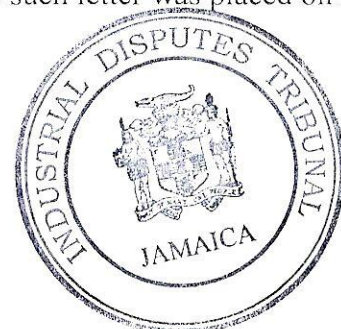
“Q: *My question to you, and I repeat, is there a letter on Maria's file indicating that she failed to meet deadlines subsequent to your March 19, 2021 email to the team, to all supervisors?*

A: *yes, there are emails on record.*

Q: *all right. Because in that email on page 2 there are some conclusions, am I correct?*

A: *Yes, you are correct”*

Notwithstanding the Company writing to Ms. Gayle via email dated March 19, 2021, threatening that failure to meet deadlines a letter would be placed on her file, no such letter was placed on her file.



42. It is interesting to note that although the Company conducted a redundancy exercise in October 2021 and sales supervisors' positions were made redundant using a performance based criterion, Ms. Gayle was not selected. The Tribunal finds it very strange that Ms. Gayle being the one with less years of service despite the Company's claim about her poor performance was retained in its employment.
43. No evidence was submitted by the Company that Ms. Gayle was ever called in by the Group Human Resource Manager to discuss her performance. Neither was HR written to by Ms. Gayle's Supervisor/Manager about her performance and any recommendations made for her to be terminated based on her performance. This conclusion was corroborated by the evidence given by Ms. Henry during cross examination by Senator Brown.

Q: have you ever been called in by HR to speak with Maria and HR?

A: No, I have never had a meeting with HR and Maria together.

Q: Now this email Exhibit 17, apart from which is sent to team copied to HR, did you send any email or letter to HR specifically dealing with Maria only?

A: I cannot recall doing that, but I can tell you that her ...

Q: No, the answer is fine, you can't recall doing that

A: No

Q: In November or December 2021 did you send any written communication to HR asking for Maria Gayle to be terminated?

A: No "

44. Of significance is that during Ms. Gayle's (16) months of employment she was never given a letter by HR inviting her to a meeting regarding her performance on the job. As a matter of fact Ms. Gayle received two pay increases, one in 2021 and the other in early 2022. She also received an incentive in December 2021.

45. We therefore conclude that whilst certain areas of Ms. Gayle's performance may be in need of improvement, the Company failed miserably in the procedural handling of the matter. Ms. Gayle was ambushed with a letter terminating her employment without any prior notification.



46. In light of the facts gleaned, the Tribunal is duty bound to have regards for the Labour Relations Code (LRC). Section 3(4) of the Labour Relations and Industrial Disputes Act (LRIDA) 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.”

47. The purpose of the LRIDA and the LRC is to promote good industrial relations which include (inter alia) the principle of developing and maintaining good personnel management techniques designed to secure effective co-operation between workers and their employers and to protect workers and employers against unfair labour practices

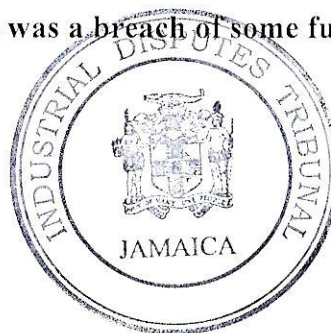
48. Reference is made to paragraph 2 of the Labour Relation Code:

‘Recognition is given to the fact that 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.’

49. Ms. Gayle was not afforded the dignity to which she had a right. There must be due regard to fairness of the termination of person’s employment.

The Tribunal finds that the manner in which Ms. Gayle’s termination was carried out by the Company demonstrated very little if any concern for her dignity and human feeling as a worker.

50. Reference is also made to **Village Resorts Ltd. v IDT** where Bingham JA stated that **“a fortiori for a dismissal to be lawful within the meaning of the Act therefore. It is not sufficient for the employer to show that by the employee’s conduct therefore was a breach of some fundamental**



term of the employee's contract in the strict sense, giving him the right at law to dismiss the employee, but the employer must go further to establish that this action in dismissing the employee was justified i.e. capable of being justified within the meaning ascribed to that term by the Tribunal, taking into consideration all the circumstances of the case.”

51. There was no meeting with HR, Ms. Gayle and her supervisors to discuss her performance, neither was any recommendation made by any of her of her supervisors to HR for her to be terminated.
52. The Tribunal therefore concludes that Ms. Gayle was unjustifiably dismissed and awards accordingly.



THE AWARD:

53. The Tribunal, in accordance with Section 12(5) (c) (iii) of the Labour Relations and Industrial Disputes Act, awards that:


- a. Ms. Maria Gayle be reinstated to her job on or before December 16, 2024 and be paid the sum of Five Million Eight Hundred Thousand Dollars (\$5,800,000.00) for her unjustifiable dismissal.


or

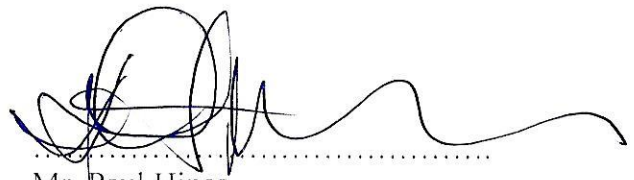
- b. Failure to reinstate Ms. Gayle as stipulated in (a) above that she be compensated in the sum of Eleven Million Four Hundred Thousand Dollars (\$11,400,000.00).

DATED THIS 2ND DAY OF DECEMBER 2024

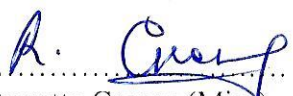



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Mrs. Sharon Anderson
Chairman


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Mrs. Jacqueline Irons, J.P.
Member


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Mr. Paul Hines
Member

Witness:


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Royette Creary (Miss)
Secretary to the Division