

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: 27/2022

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## SETTLEMENT OF DISPUTE

BETWEEN

B.D. DADLANI (JAMAICA) LIMITED

AND

RAJ KUMAR KHURANA

AND THE

*AWARD*



### I.D.T. DIVISION

MS. SADEERA SHAW	-	CHAIRMAN
MR. RODCLIFFE ROBERTSON, JP	-	MEMBER
MR. KEITH FAGAN	-	MEMBER

FEBRUARY 29, 2024

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF AN INDUSTRIAL DISPUTE**

**BETWEEN**

**B.D. DADLANI (JAMAICA) LIMITED  
(THE COMPANY)**

**AND**

**RAJ KUMAR KHURANA  
(THE AGGRIEVED WORKER)**

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**REFERENCE:**

By letter dated July 22, 2022 the Honourable Minister of Labour and Social Security pursuant to Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute describe therein:-

The Terms of Reference were as follows:

***"To determine and settle the dispute between B.D. Dadlani on the one hand, and Raj Kumar Khurana on the other hand, over his separation from the company".***

## **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:

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

## **REPRESENTATIVES OF THE PARTIES:**

The **Company** was represented by:

Ms. Taniesha McIntosh	-	Attorney-at-Law
Mr. Gordon Brown	-	Attorney-at-Law

The **Aggrieved Worker** was represented by:

Mr. Andre A.K. Earle	-	Attorney-at-Law, KC
Ms. Diandra McPherson	-	Attorney-at-Law

In attendance:

Mr. Raj Kumar Khurana	-	Aggrieved Worker
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## **SUBMISSIONS AND SITTINGS**

Briefs were submitted by both parties who made written and oral submissions during twenty-two (22) sittings from September 8, 2022, and August 15, 2023.





## **BACKGROUND TO THE DISPUTE:**

1. B.D Dadlani, *hereinafter referred to as "the Company"*, was incorporated in Jamaica in 1972 where it presently owns and operates the Casa de Oro chain of in-bond duty free jewelry stores in the resort towns of Ocho Rios, Falmouth, Montego Bay and Negril.
2. Mr. Raj Khurana, *hereinafter referred to as "the Aggrieved Worker"*, was employed to the Company in April 1999 and later promoted to Chief Financial Officer. In January 2020, the Aggrieved Worker went on vacation to India and due to the COVID-19 pandemic, he was unable to return in March 2020. Upon his return in November 2020, the Company requested and held meetings with him to discuss some discrepancies discovered. The Aggrieved Worker hasn't resumed work since his return to Jamaica.
3. The Aggrieved Worker engaged the services of Mr. Andre Earle, Attorney-at-Law, who contested his separation and sought the assistance and intervention of the Ministry of Labour and Social Security. No resolution was reached and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

## **THE COMPANY'S CASE**

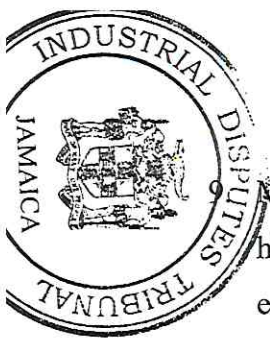
4. The Company made oral submissions and called three (3) witnesses in support of its case. The first witness was Mr. Indru Kumar Dadlani who testified that he is the Managing Director of the Company since 1994. He gave evidence that the Company had approximately 50-60 employees prior to the COVID-19 pandemic. He stated that the Aggrieved Worker was employed to the Company on April 22, 1999 as a Sales Manager.
5. It is his evidence that persons were employed based on recommendations from their previous employment. In addition, background checks were conducted and if the person was qualified, the Company would hire them. He explained that the contract period for expatriates was 2-3 years based on the work permit period. He testified that if the employees proved themselves continuously interested in the Company after a review of their performance was conducted, the contract would be renewed. He gave evidence that the



contracts were mostly verbal and were finalized via telephone calls and/or emails. He stated that the said verbal contract entailed accommodation, transportation, medical and salary.

6. It is his evidence that the Aggrieved Worker received said work permit and his contract period was subject to it. Mr. Dadlani testified that at the end of each contract period, he met with the Aggrieved Worker and worked out the shortfall in salaries owed to him and that would be settled in a reasonable period of time. He gave evidence that the Aggrieved Worker had 6-7 contract periods with the Company in which he was paid all outstanding amounts due to him at the end of each contract period. He stated that the last settlement with the Aggrieved Worker was in 2017. It is his evidence that the Aggrieved Worker eventually became a citizen of Jamaica and no longer required a work permit. He testified that at the end of each term, the expatriates would return to India for approximately two (2) months (unpaid) and that they would return if they performed well and wanted to engage with the Company for another term.
7. He gave evidence that the Aggrieved Worker moved from the Sales Department to the Accounts Department where he held the position of Assistant Accountant. He stated that on the unfortunate passing of his son, who was the Chief Financial Officer at the time, the position was passed to the Aggrieved Worker in or about 2014. He explained that he and his wife had no choice but to appoint the Aggrieved Worker as he (the Aggrieved Worker) worked with his son and understood mostly everything about the financial position of the Company. He testified that the Aggrieved Worker's remuneration package consisted of net salary amounting to \$2,500USD, housing, medical coverage and transportation. He also testified that the Aggrieved Worker received a gift of \$10,000USD on a yearly basis.
8. He gave evidence that the Aggrieved Worker reported to him but it was a very informal system based on trust where an email would be sent or things said by the way. He stated that if it was a matter with serious implications, they would sit to discuss the implications and a meeting with the Board and the Auditor would follow. He testified that although the Aggrieved Worker reported to him directly, he didn't recall receiving any detailed report of his work.





Mr. Dadlani indicated that the Aggrieved Worker went on vacation with his family to visit his mother on January 31, 2020 with the intention to return on March 24, 2020. He gave evidence that he hired Ms. Carol Donaldson to assist with the finances during the Aggrieved Worker's absence. He stated that it was the Company's policy that any vacation taken by expatriates was unpaid vacation leave. It is his evidence that he facilitated the acquisition of the airline tickets by using the miles from his credit card and that any changes made to the travel arrangement had to be approved by him. It is also his evidence that he informed the Aggrieved Worker to remember his position as he (the Aggrieved Worker) needed to keep in contact via email or WhatsApp while on vacation. He testified that at the time of the Aggrieved Worker's vacation, he was of the view that the Aggrieved Worker's contract period ended and he would return on a new contract after agreeing on what was owed to him from the last contract period.

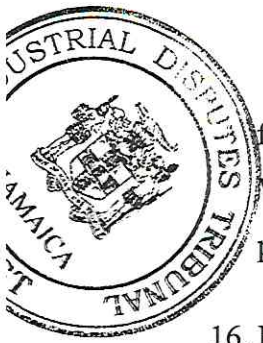
10. He gave evidence that from 2014 up until January 2020 when the Aggrieved Worker went on vacation, all of the external affairs seemed to be running. He stated that due to the fact that the COVID-19 pandemic affected Jamaica in or around March 10, 2020 resulting in the borders being closed on March 21, 2020, the Aggrieved Worker was unable to return on the scheduled date. He also stated that the Indian borders were also closed on March 22, 2020.
11. It is his evidence that during the period of the Aggrieved Worker's vacation, the Company became cognizant of unpaid credit card and taxes which affected the Company's ability to obtain a Tax Compliance Certificate (TCC). Mr. Dadlani detailed a specific issue with the Company's credit card where the Aggrieved Worker used the credit card to its limit of \$10,000,000JMD then paid \$1,000,000JMD million dollars to the said card. The Aggrieved Worker then used the card for \$1,000,000JMD without paying attention to the balance owed on the said card which left the Company with a high credit card interest to repay.
12. He mentioned other instances where the Aggrieved Worker obtained a TCC in 2019 and upon renewal while the Aggrieved Worker was on vacation, the Company was informed that they owed \$15,000,000JMD and was unable to renew their TCC. He went on to stress the importance of a TCC to the business in that the Company can't import goods without it.





He testified that regardless of cash flow, there were certain things that must be paid such as statutory taxes as the TCC was the heart of the business.

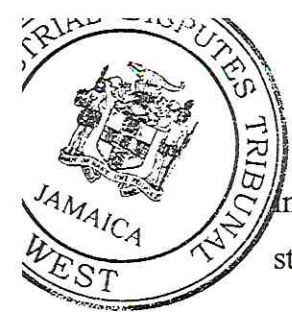
13. He gave evidence that the Company generated a financial statement each year but he didn't pay much attention to it as he depended on the Aggrieved Worker and the Accountants. He stated that he signed off on them because he was told to do so by them. He compared the situation then and presently where Ms. Donaldson reviews the statement with him line by line. It is his evidence that from the financial statement, it showed that there was a decline in business from the end of 2019. He testified that tourism was low and it got worse with the COVID-19 pandemic. He gave evidence that he thought the COVID-19 pandemic would last for 1-2 months and he had closed the store at the airport in an effort to brace the impact. He stated that with the country's border closed and the hotel industry severely affected, it resulted in the Company closing its business for 6-8 months. He explained that in order to stay afloat, the Company had to borrow more and more loans.
14. It is his evidence that it was when Ms. Donaldson asked questions that the auditors opened a full investigation and the discrepancies were discovered. He gave evidence that he emailed the Aggrieved Worker about the discrepancies such as the unpaid statutory taxes, errors in the 2019 balance sheet where most of the rentals, outstanding salaries to managers for the period 2018-2019, customs duty and credit cards were not reflected in it as well as unpaid loan payments for two (2) years. He indicated that the Aggrieved Worker's response to the above-mentioned concerns was not acceptable. He stated that he decided to wait for the Aggrieved Worker to return so they could have a face to face discussion. It is his evidence that it was from Ms. Donaldson being at the Company and asking for a number of things which highlighted all the discrepancies.
15. He testified that in or about June 2020, the borders opened to some countries which applied to the Aggrieved Worker and his family. He gave evidence that the Aggrieved Worker continued to procrastinate in making the arrangements to return to Jamaica. He stated that the Aggrieved Worker eventually returned to Jamaica on or about November 12, 2020 where he quarantined at the apartment provided to him by the Company. It is his evidence that if the Aggrieved Worker took his job seriously, he (the Aggrieved Worker) would have



found a way to return to Jamaica earlier. Further, Mr. Dadlani testified that the Aggrieved Worker could have asked for his assistance in getting an agent to work on his return as his presence in Jamaica was necessary for him to accomplish his job.

16. He later gave evidence that during the period that the Aggrieved Worker was on vacation, he wasn't sure what the Aggrieved Worker's employment status was because of financial issues that were discovered. He re-iterated that he wanted to have a face-to-face discussion on each point of concern. He spoke of his disappointment in the Aggrieved Worker as he had a lot of trust in him and expected him to take care of the Company's financials to the point where he was presented with a pile of cheques which the Aggrieved Worker instructed him to sign and he did with no questions asked. He stated that upon the Aggrieved Worker's return to Jamaica, the Aggrieved Worker was not allowed to return to work.
17. It is his evidence that the Aggrieved Worker informed him that files were deleted from the laptop he (the Aggrieved Worker) used by the time he returned to Jamaica. He indicated that he was made aware that the password to the Aggrieved Worker's laptop was changed in October 2020 after it was done. He testified that he didn't notify the Aggrieved Worker of the denied access and that he didn't do anything to have it reversed after being made aware. He stated that it was not the norm to go through a manager's email but when he realized that the Aggrieved Worker increased his salary two (2) times in a year and other issues which he wanted clarification, he didn't want the Aggrieved Worker to log in remotely and create further damage. It is his evidence that the reason for the file deletion was because the Aggrieved Worker had personal affairs on the Company's computer which the Company considered to be trash.
18. He testified that the Aggrieved Worker kept asking when he can return to work. This initiated a meeting with himself (Mr. Dadlani), Mrs. Dadlani, Carol Donaldson and the Aggrieved Worker on December 30, 2020. He gave evidence that during said meeting he recalled that the Aggrieved Worker got angry and called him (Mr. Dadlani) senile. He stated that the Aggrieved Worker's responses to the Company's concerns didn't make any sense. It is his evidence that no written complaint was presented to the Aggrieved Worker nor were any charges laid against him during the said meeting. He testified that there was no





indication of disciplinary action taken against the Aggrieved Worker as the Company was still digging for information.

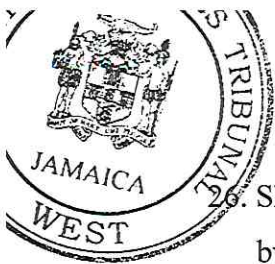
19. He gave evidence that the Aggrieved Worker continued to ask when he can return to work in which he told him (the Aggrieved Worker) that he needed proper clarification first. He stated that there was another meeting held on January 8, 2021 and up to the 2<sup>nd</sup> meeting, he was still waiting on the requested clarification. This made him unable to make a decision concerning the Aggrieved Worker employment. It is his evidence that he did not recall referring to the Aggrieved Worker as a former employee in the 2<sup>nd</sup> meeting.
20. He testified that at the end of the 2<sup>nd</sup> meeting, he still could not lay any charges against the Aggrieved Worker as he still did not obtain the requested clarification. He gave evidence that if the Aggrieved Worker had provided the requested clarification, he (the Aggrieved Worker) would still have a job. He then stated that the Aggrieved Worker was on suspension until he received the requested clarification. It is his evidence that the last time the Aggrieved Worker worked for the Company was January 2020. He testified that he did not know the correct terminology to describe the situation as he didn't think it was the right thing for him return to work with the financial issues unresolved.
21. He gave evidence that the last salary paid to the Aggrieved Worker was for April 2019 which was paid in March 2020. He was of the view that it wasn't unusual for an employer not to pay its employee salary from May 2019 to January 2021 as it depended on what was agreed between the parties. He noted that the Aggrieved Worker continued to stay at the apartment until February 2022.
22. Mr. Dadlani described the Company's present state of finances as terrible as the Company has a lot of liabilities with the bank. He stated that the Aggrieved Worker killed his Company. He further stated that cash flow is low, sales are down and the Company is trying to cope with the losses. He stated that the Company had to close its store in Falmouth and implement salary cuts for the staff who remained with the Company.
23. The second witness was Ms. Carol Donaldson who testified that she has been working at the Company as an Accountant since January 2020. She gave evidence that she met Mrs.



Dadlani who indicated that she is in need of an Accountant as the Company Financial Officer was going on a break for two (2) months. She stated that when she started at the Company, there were two (2) other persons in the department, namely, Mr. Johnson, who was with the Company for fifty (50) years and the Aggrieved Worker, who departed three (3) weeks later. It is her evidence that while working at the Company, her duties included recording the lodgments, recording sales to the general ledger, wire transfer payments to suppliers, posting of outstanding invoices, bank reconciliation, payroll, filing of various taxes and the preparation of the financial statements.

24. She testified that the Aggrieved Worker briefed her on the financials before departing. She gave evidence that she asked the Aggrieved Worker questions as they went through the financials such as why the staff weren't paid for over a month. She stated that the Aggrieved Worker's response was that the staff received accommodation and monthly allowances. She was of the view that such an occurrence raised a red flag. It is her evidence that she asked for the cost of sales as she gathered from the discussions that the Company was not doing well as no funds were available. She testified that there wasn't a monthly financial statement as she was trying to ascertain the financial status of the Company.
25. During her tenure at the Company, she indicated that she discovered some financial irregularities. She highlighted one (1) such irregularity where the Aggrieved Worker gave, the Company's driver a cheque of \$127,000JMD to be lodged to a bank account which she, Mr. and Mrs. Dadlani were not aware of. She gave evidence that she conducted further checks and discovered that the cheque was to be deposited to the same account that the Aggrieved Worker told her to lodge \$65,000JMD for payment of a loan. She went on to state that the account that the funds were being deposited into was not the Loan Account but the bank was withdrawing the monthly loan amount of \$127,000JMD each month while the \$65,000JMD stayed in the account. It is her evidence that the balance in the account was approximately \$2,000,000JMD which she questioned why it wasn't being used to lower the monies owed for the loan. She testified that she brought the matter to Mr. Dadlani's attention who was shocked and indicated to her that he would email the Aggrieved Worker.





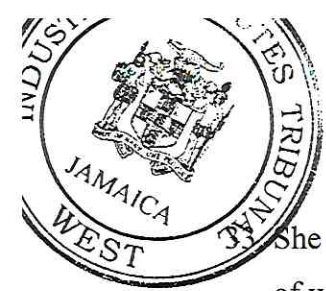
26. She gave evidence that she didn't have any discussions with the Aggrieved Worker whether by telephone, face-to-face nor virtual concerning said irregularities. She stated that she asked the Aggrieved Worker several times prior to him departing for his vacation how soon she would be able to contact him. It is her evidence that the Aggrieved Worker told her that he would be at his mother's house which didn't have internet. She continued by testifying that the Aggrieved Worker informed her that he was going to apply for internet which could take 2-3 weeks and he would contact her as soon as he received internet connection.
27. She stated that she made an effort to contact the Aggrieved Worker by sending an email in which she didn't receive a response. It is her evidence that she asked Mr. Dadlani to send the Aggrieved Worker an email on a number of occasions. She recalled that the Aggrieved Worker responded once to state that he didn't have the time. She testified that no charges were proffered nor any disciplinary action taken against the Aggrieved Worker concerning the said financial irregularities.
28. She gave evidence that the Company didn't have any cash. She gave instances where the Company was unable to meet its financial obligations such as obtaining a TCC. She explained that the TCC was a certificate that was needed for the clearing of imported goods and that the Company can't operate without it. She stated that the TCC expired at the end of January 2020 and she managed to obtain another one for three (3) months. It is her evidence that she hasn't been able to obtain another one due to outstanding taxes to be paid. She testified that the Company had NHT arrears from 2015 which she cleared up to December 2022. She also testified that she was unable to pay the NHT for the next period which was due January 2023. With regards to HEART Trust, she stated that the Company still had an outstanding balance despite payment plans as the Company was not able to meet its monthly obligations. It is her evidence that there was extremely poor management of the accounting department. Ms. Donaldson described the general condition of the Company's finances as extremely fragile and poor. She expected the Company to close permanently.
29. She testified that the 2018 and 2019 Financial Statements showed a profit as opposed to the 2020 Financial Statement. She gave evidence that profit based on equity as shown in the 2019 Financial Statement did not show a true picture of the Company's affairs as the figures





reflected in the 2019 Financial Statement were questionable. She stated that this created many problems as the Company can't pay its staff, loans, credit cards and foreign vendors from 2019. She agreed that the pandemic, the COVID-19 pandemic, which occurred in 2020 had a negative impact on the Company as reflected in the 2020 Financial Statement.

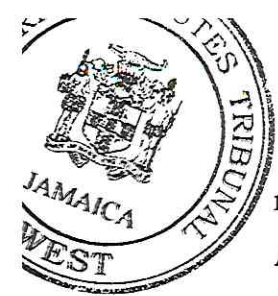
30. It is her evidence that due to the effects of The COVID-19 pandemic, the Company had to close its business on March 23, 2020 and reopened in October 2020. She testified that the staff didn't receive any salary during the period that the Company closed. She gave evidence that when the Company re-opened its doors in October 2020, payments were made to the Aggrieved Worker's bank account for salaries owed from 2018. She stated that the Aggrieved Worker wasn't paid for the vacation period as the Aggrieved Worker informed the Payroll Clerk prior to departing to take him off the payroll. Ms. Donaldson explained that it might be due to the arrangements with the expatriate where they were not paid vacation leave.
31. The third witness was Mrs. Joyti Dadlani who testified that she occupies the position of Director at the Company. She gave evidence that her role in the Company, other than being a Director, was to assist with sales and the staff in general. She stated that she received a salary sometimes but it didn't matter as she was the owner and would rather pay her staff. It is her evidence that she has been affiliated with the Company for fifty (50) years as she is married to Mr. Indru Dadlani, Managing Director. She testified that she knew the Aggrieved Worker when he arrived in Jamaica to work at the Company in April 1999 as a Salesperson.
32. She described the terms of his employment as a verbal contract for a period of three (3) years which was the same for the other expatriate employees. She gave evidence that the period of employment was in accordance with the work permit received. She explained that the proposed salary was emailed to the prospective employee and if they agreed to it they would come to Jamaica. She continued by stating that expatriates such as the Aggrieved Worker would return to his country, India, for 2-3 months at the end of each term and return to Jamaica for another term at the Company. It is her evidence that if the expatriates wished not to return to the Company, then they remained in India.



She explained that at the end of each term, the Company would settle the accounts in terms of what was owed to the expatriate (salary and bonus based on performance) before he/she departed for India. She testified that after the amount was agreed, the Company would draft a document which stated the year the expatriate arrived, the year they were deemed to leave, the name of the expatriate and the time worked. She gave evidence that she and Mr. Dadlani were, at all times, and involved in the settlement of accounts process.

34. She stated that she did not recall the number of contract terms the Aggrieved Worker worked with the Company. It is her evidence that the Company stopped applying for his work permit because the Aggrieved Worker got married to a Jamaican so he was no longer required to possess a work permit to work in the country. She testified that the Aggrieved Worker moved from Sales to the Accounts Department where he assisted Mr. Johnson and their late son, Dinesh Dadlani.
35. She disagreed that the Aggrieved Worker was promoted in 2000 to the position of Internal Accountant. She gave evidence that the Aggrieved Worker was assisting the persons in the Accounts Department but she didn't recall his position. She stated that on the unfortunate passing of her son, the Aggrieved Worker was promoted to Chief Financial Officer. It is her evidence that during the Aggrieved Worker's tenure at the Company, he was on a three (3) years contract in which he returned to India for vacation in between contract periods.
36. She testified that the Aggrieved Worker went on vacation in 2016 and again in 2020. She gave evidence that when he (the Aggrieved Worker) went on vacation in January 2020 he was unable to return at the end of March because of the COVID-19 pandemic. She stated that the Aggrieved Worker returned at the end of November 2020 but she was of the view that he could have returned earlier.
37. She described the Aggrieved Worker as industrious and hardworking. She also considered him a benefit to the Company but he also was a benefit to himself. It is her evidence that she didn't know if a disciplinary hearing was held concerning the Aggrieved Worker. She later testified that a hearing was held with the Aggrieved Worker with regards to





mismanagement on December 30, 2020 and January 8, 2021. The persons present were the Aggrieved Worker, Mr. Dadlani, Ms. Donaldson and herself.

38. She gave evidence that for the hearing(s) held, the Aggrieved Worker was not informed of his right to representation. She stated that in the said hearings, questions were posed to the Aggrieved Worker about the Company's accounts and credit cards. It is her evidence that both, the Aggrieved Worker and Mr. Dadlani, were unclear in how they posed questions to each other and the responses. She testified that the outcome of the hearing was that the Aggrieved Worker was to get back to them with answers to some questions asked of him. She disagreed when asked if Mr. Dadlani referred to the Aggrieved Worker as a former employee.
39. She gave evidence that from November 12, 2020 (the Aggrieved Worker's return to Jamaica) up to the date of the 2<sup>nd</sup> meeting, January 8, 2021, the Aggrieved Worker was still employed to the Company but didn't resume work. She stated that the Aggrieved Worker was not unjustifiably terminated. She testified that Aggrieved Worker's contract ended when he returned to India in 2020. His new contract didn't start when he returned to Jamaica as he was not at work.

### **THE COMPANY'S CONTENTIONS**

The Company contends that:

- a. The Aggrieved Worker was always a contracted employee and on January 31, 2020, the Aggrieved Worker proceeded on an end of contract break;
- b. During the Aggrieved Worker's absence, he (the Aggrieved Worker) didn't perform any substantial work on behalf of the Company nor provided any support. In addition, during that time the Company discovered some discrepancies concerning the Aggrieved Worker's performance;
- c. Despite The COVID-19 pandemic, the Aggrieved Worker could have returned to Jamaica and by extension to the Company sooner as opposed to an eight (8) month absence;



- d. Arising from the said discrepancies, the Company held meetings with the Aggrieved Worker upon his return to Jamaica;
- e. As a result of those meetings, the Company made the decision not to renew the Aggrieved Worker's contract;
- f. The Company asks the Tribunal to find that the Aggrieved Worker was not constructively and unjustifiably dismissed but that his employment contract came to an end from the Company's decision not to renew said contract of employment.

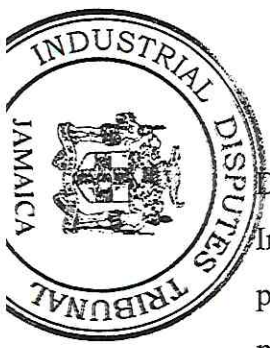
### **THE AGGRIEVED WORKER'S CASE**

40. In presenting the case of the Aggrieved Worker, his representative Mr. Andre Earle KC, called his only witness, Mr. Raj Kumar Khurana who testified that he currently resides in Canada since February 26, 2022 on a student visa. He indicated that up to the date he arrived in Canada in 2022, he lived at the complex provided by the Company. He gave evidence that he was unemployed as he was not in possession of a work permit and did not make any efforts to seek alternative employment.



41. He stated that he was employed to the Company in April 1999 in the capacity of Sales Manager on a three (3) year verbal contract. It is his evidence that in the year 2000, he was transferred to the Accounts Department in the position of Internal Accountant. He testified that at the end of his 1<sup>st</sup> term in 2002, he was paid a bonus. He also testified that at the end of the said term he returned to India and was not paid for the period he was in India.

42. He gave evidence that he started his 2<sup>nd</sup> term with the Company in or around March 2002 for another three (3) years. He stated that he was promoted to Chief Financial Officer in 2005 and reported to both the Director of Finance, Mr. Dinnesh Dadlani and the Managing Director, Mr. Indru Dadlani. It is his evidence that he was not given a job description for the said position but his duties included liaising with all financial institutions, suppliers, governmental institutions and ensuring the internal things are abreast with Mr. Dinesh



Dadlani and management. He testified that at the end of his 2<sup>nd</sup> term in 2005, he returned to India for two (2) months and he didn't receive any payment for the said two (2) month period. He gave evidence that at the end of the said 2<sup>nd</sup> term, he wasn't paid all outstanding monies from the Company until 2014.

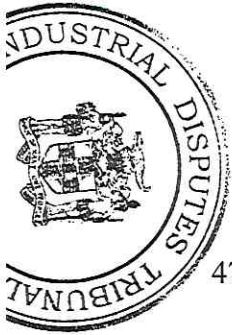
43. He stated that up to January 8, 2021, his net monthly salary was \$2,500USD. He also received a banking allowance of \$600USD, a monthly salary increase of \$500USD which was recorded in the books as a perk, accommodation inclusive of utilities and since 2014 he was given \$10,000USD on a yearly basis. It is his evidence that he was not on contract up to his termination because he was a senior manager. He went on to explain that 90% of the Indian expatriates were employed on a three (3) year agreements for the 1<sup>st</sup> two (2) terms. He testified that after the 2<sup>nd</sup> term or the 6<sup>th</sup> year at the Company and/or based on negotiations between the Company and the employee, the employee is considered a senior employee and permanent.
44. It is his evidence that he went on authorized vacation on January 31, 2020 with a scheduled return of March 23, 2020 and for him to return to work the next day. He testified that Mr. Dadlani paid for his airline ticket using his visa mileage card. He gave evidence that because the ticket was purchased with Mr. Dadlani's miles, he (Mr. Dadlani) had full control over any changes to it. He stated that he didn't return as scheduled due to the COVID-19 pandemic and the travel restrictions. It is his evidence that travel restrictions were imposed in India on March 22, 2020 for international flights and domestic travel restrictions occurred before that.
45. He testified that normally Indian workers weren't paid when they took leave and returned to India. He stated that that did not apply to him since 2014 when he was assigned added responsibility due to the unfortunate passing of Mr. Dimesh Dadlani. He gave evidence that he travelled to India a few times since 2014 where he worked remotely and was paid during those periods. He then stated that he should be paid for his vacation leave in 2020. It is his evidence that he received one (1) month salary whilst on vacation in March 2020 which was for outstanding salary for April 2019 which was the last salary he received from the Company.



46. He gave evidence that he was in constant communication with the Company whilst on vacation and worked on company-related matters until June 2020 when he realized that emails were deleted from his inbox. He stated that he emailed Mr. Dadlani about it in which he didn't receive a response. It is his evidence that he continued to notice more emails being deleted so he sent another email in July where he included Mrs. Dadlani and Mr. Aroon Dadlani. He testified that Mr. Aroon Dadlani responded that only rubbish emails were deleted. He gave evidence that he responded by stating that they were business records and should not be deleted. He indicated that because of the above-mentioned, he decided to take a backseat approach by forwarding important emails and sending reminders if they were not addressed.

47. He explained that he returned to Jamaica on November 12, 2020 and in response to Mr. Dadlani's evidence that he could have returned to Jamaica earlier, he reiterated that Mr. Dadlani was in complete control of his itinerary. In addition, he wasn't aware of an Air Bubble Agreement which would have allowed him and his family to travel until September 2020. He stated that when he became aware, he contacted Mr. Dadlani to make the necessary changes to the itinerary which Mr. Dadlani refused because he (Mr. Khurana) was originally booked via UK and had to change it to travel via USA. Mr. Dadlani was of the view that it was too costly and received a refund for the return portion of the trip. It is his evidence that he had to purchase the return tickets to Jamaica from his pocket.

48. He testified that upon his return, Mr. and Mrs. Dadlani arranged for him and his family to quarantine at an apartment for one (1) week while they awaited the result of their COVID-19 test. He gave evidence that upon receiving the results, he shared it with Mr. Dadlani who then allowed him and his family to return to the Company's complex. He stated that he attempted to access his work computer the day after he returned to Jamaica, November 13, 2020 in which he was not able to. It is his evidence that the last time he was able to access it was November 8, 2020 prior to leaving India. He testified that he called Mrs. Dadlani to enquire about what happened in which Mrs. Dadlani informed him that she wasn't aware of it and she would speak to her son, Mr. Aroon Dadlani.





49. He gave evidence that Mr. Dadlani told him to wait a few weeks before resuming work. He stated that while he was waiting on the decision when to return to work, he settled in his apartment and visited a few friends in the business market. From visiting them, it is his evidence that he heard things that weren't true such as rumours of embezzlement and poor performance. He also heard that he refused to give the Company passwords, not answering their calls and that he was not returning to Jamaica because he didn't want to answer some questions.

50. He testified that after hearing such things he decided to put his request for resumption in writing via email which the Company kept deferring. He gave evidence that he emailed the Company more than once and continued to ask Mrs. Dadlani for an update as she informed him not to speak to Mr. Dadlani directly. He stated that on December 30, 2020, he received a call from Mrs. Dadlani at approximately 11:30am that they were ready to meet with him at 3pm that day.

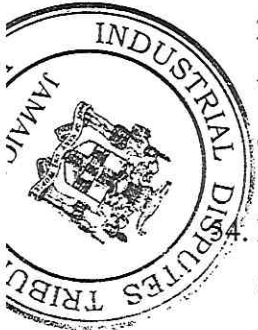
51. Mr. Khurana confirmed that he attended the meeting on December 30, 2020 and the persons present at the meeting were Mr. Dadlani, Mrs. Dadlani, Ms. Donaldson and himself. It is his evidence that Mr. Dadlani brought up matters concerning the National Commercial Bank (NCB), Tax Administration, credit cards and cash payments. He testified that after the last allegation of not depositing cash, he requested if Mr. Dadlani could put his concerns in writing as they were serious allegations. He gave evidence that Mr. Dadlani refused to comply with his request. He stated that after Mr. Dadlani refused to put his concerns in writing, he answered all of their concerns in the said meeting. It is his evidence that Mr. Dadlani ended the meeting on that note with the intention to call another meeting in the first week of January 2021.

52. He testified that he sent an email to Mr. and Mrs. Dadlani on December 31, 2020 where he requested when the Company will make a decision as well as for them to send proof regarding the NCB loan. He gave evidence that after that email, the 2<sup>nd</sup> meeting was held on January 8, 2021 with the same persons who were present at the first meeting. He stated that the meeting was primarily on a personal note where questions were asked about his salary and that he (Mr. Dadlani) was going to take over the NCB loan which was in the



Aggrieved Worker's name. He also stated the Mr. Dadlani referred to him as a former employee in the meeting.

53. With regards to the NCB loan, it is his evidence that in May 2018, Mr. Dadlani asked him for a personal loan of \$65,000USD to pay a vendor. He testified that he decided to loan the monies against a verbal agreement that it would have been paid off in two (2) months. He gave evidence that it was not paid off as promised and a new agreement was made in July 2018 that the Company would pay him a weekly amount of \$100,000JMD until the loan was paid off. He stated that in October 2018, the payments stopped due to the Company's cash issues and no payments made thereafter.



54. It is his evidence that in December 2018, he applied and obtained a loan from NCB on the Company's behalf to pay off the personal loan the Company borrowed from him. The NCB loan was granted in his name because the Company already had a corporate loan application in process and it would not look good for the Director of the said Company to apply for a personal loan at the same time. He testified that although the loan was in his name, it was paid by the Company. He gave evidence that he agreed to the loan being in his name under conditions which included an additional weekly deposit in the loan service account of \$50,000JMD which was separate from the loan monthly payment of \$128,000JMD. He stated that he requested the additional deposit because the same promises were made with his personal loan to pay it off in two (2) months and it was not honoured. In addition, he stated that the NCB loan was an unsecured loan from a financial institution which if not paid, it would affect his personal credit.

55. He testified that in January 2019, he went to Mr. Dadlani to inform him that it was two (2) months since they obtained the loan and it was not paid off. He gave evidence that Mr. Dadlani informed him that the Company was unable to pay it off at that point because of cash flow and that he (Mr. Khurana) should give him a few more months. He stated that in response he suggested to Mr. Dadlani to use the monies sitting in the loan service account from the weekly deposits which totaled \$280,000-\$300,000JMD at the time to pay on the loan. This was agreed between himself and Mr. Dadlani and actioned by NCB.

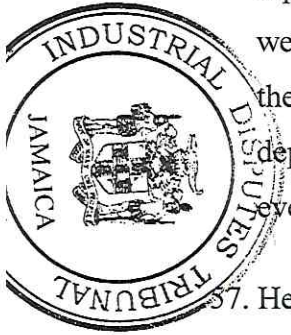


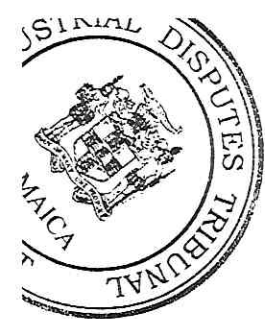
56. It is his evidence that the weekly payments to the loan service account continued and he approached Mr. Dadlani in either April or May 2019 to ascertain whether the loan could be liquidated. He stated that it didn't happened and he made the same suggestion to use the weekly deposit to pay down on the loan. He testified that from discussing the matter with the bank, it was decided that the Company would, in the future, make a yearly lump sum deposit from the weekly payments in the month of February instead of a lump sum payment every 2-3 months.

57. He gave evidence that the monthly and weekly deposits were made up to January 2020. He stated that whilst on vacation in February 2020, he realized that the weekly deposits were made but not the monthly deposit. It is his evidence that in March 2020 some weekly payments were made so he sent Mr. Dadlani an email to enquire about the missed payments. He testified that Mr. Dadlani responded that the failure to make the deposits were due to financial constraints.

58. He gave evidence that the weekly deposit accumulated to approximately \$2,500,000JMD by March 2020 and that the loan was being paid from the said accumulated weekly deposits and not the monthly deposits as the Company stopped paying it from January 2020. He stated that in August 2020, he received an email from NCB enquiring why the monthly deposits had stopped which he forwarded the email to Mr. Dadlani. It is his evidence that Mr. Dadlani acted surprise about the agreed payment arrangement. He testified that he had to pay off the loan in 2022 out of his pocket as the Company stopped making the payments.

59. He went on to give evidence as to the reason why the Company unpaid taxes amounted to \$15,000,000JMD owing to Tax Administration. He stated that the Company's primary currency was USD and as such the Company had to convert USD to JMD to meet its local obligations. It is his evidence that due to cash flow issues the Company didn't make conversions for five (5) weeks during the months of July 2019-February 2020 and when it was able to make conversions, the amount wasn't what was required to meet its obligations. He testified that due to the constricted cash flow, the Company concentrated on paying PAYE while neglecting NHT and Heart NTA as that was what the Company could afford





to pay. These arrears, he testified, led to the unpaid taxes accumulating to \$15,000,000JMD in early 2020.

60. With regards to the 2018 and 2019 Financial Statements, he gave evidence that he disapproved of it. He stated that he aired his concern via email with Mr. Dadlani who decided to submit them. It is his evidence that the Financial Statements didn't give the true picture of the Company's affairs and that he was in agreement with Ms. Donaldson's interpretation of the said Financial Statements. In relation to cash deposits, he testified that the Company was aware of how monies were deposited into the Company's bank accounts and the reasoning.
61. He stated that 90% of the cheques presented to Mr. Dadlani didn't have supporting documents attached. It is his evidence that due to his bad-handwriting, other persons in the Company wrote up the cheques. He testified that blank cheques were presented to Mr. Dadlani upon Mr. Dadlani's request and was used whenever Mr. Dadlani was traveling. He gave evidence that photocopies of documents evidencing what the monies were used for were presented to Mr. Dadlani when he returned. In addition, Mr. Dadlani was the signatory on the account so the bank would call him for approval.
62. It is his evidence that the Company applied for a credit card for the purposes of customs and business expenses. It is also his evidence that the Company intended to make payments to the credit card from sales. He testified that he was one of the signatories on the card and he used it with the request and approval of Mr. Dadlani. He explained that Customs had come down hard on inbound merchants, including the Company, to make a lump sum payment of what was owed. He continued to explain that if a substantial amount wasn't paid, the Company would be prevented from importing goods until the duties were paid in full.
63. He gave evidence that the Company owed approximately \$24,000,000JMD in duties and Customs was expecting approximately \$17,000,000JMD in lump sum payment. He stated that the line of credit from the credit card was \$10,000,000JMD which was less than what Customs was expecting the Company to pay. It is his evidence that the Company entered into negotiations with Customs and a lower amount was paid to take the pressure off. He



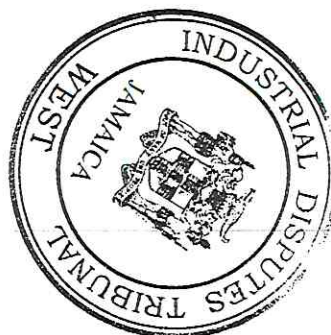
testified that the credit card was used for other business-related matters. He agreed in part with Mr. Dadlani's evidence that in 2019 the Company only paid interest to the credit card due to the Company's constricted cash flow.

64. He gave evidence that he was not charged with an offence nor did he attend a disciplinary hearing at the Company. When asked what he wanted, he stated that he wanted justice, for his name to be cleared and for him to be reinstated to his job.

### **THE AGGRIEVED WORKER'S CONTENTIONS**

The Aggrieved Worker contends that:

- a. On January 30, 2020 he went on authorized vacation leave to India for 2 months where he continued to work remotely until his return. Due to COVID 19 pandemic, he was unable to return on the scheduled date and returned on November 12, 2020;
- b. During his vacation, he became aware that emails were deleted in June/July 2020 and he was denied access to the Company business computer and emails in November 2020.
- c. Upon his return, he requested a date when he should resume his duties at the Company and was informed to wait a few weeks;
- d. He was invited to two (2) meetings held on December 30, 2020 and January 8, 2021 to discuss concerns the Company had;
- e. He was not charged with any offence and no disciplinary hearing was held concerning said issues the Company had;
- f. Up to date, he has not resumed duties at the Company and has not been paid since April 2019;





That these breaches on the Company's part, run counter to standard industrial relations practices, the LRIDA, the Labour Relations Code and also not in keeping with the principles of natural justice;

- h. That the Tribunal should find that he was unjustifiably dismissed and requests reinstatement and an award for compensation for all emoluments due to him.

### **THE TRIBUNAL'S RESPONSE AND FINDINGS**

65. The Tribunal, after careful examination of the evidence adduced by both parties to the dispute, must determine whether the Company was justified in the manner in which it separated with the Aggrieved Worker.
66. It is accepted that the Aggrieved Worker was employed to the Company initially in the position of a Sales Manager in 1999 but was promoted over the years to the position of Chief Financial Officer. It is the Company's argument that the Aggrieved Worker was on contract in which his term ended when he traveled to India in January 2020. It is the Aggrieved Worker's argument, on the other hand, that he was not on contract as he met the Company's criteria of working more than 6 years (2 contractual terms) to be considered a permanent employee.
67. It is noted that the three (3) Company witnesses in their evidence referred to the Aggrieved Worker's leave in January 2020 as a vacation leave of two (2) months as opposed to an end of contract break. In Mr. Dadlani's evidence, he stated that he paid for the Aggrieved Worker's airline tickets with his miles and informed the Aggrieved Worker to remember his position and that he (the Aggrieved Worker) needed to be in contact during the period. This was confirmed by Mrs. Dadlani's and Ms. Donaldson's evidence where Ms. Donaldson was hired with the intention of relieving the Company's Chief Financial Officer who was going on vacation for two (2) months. It is also important to note that Mr. and Mrs. Dadlani were adamant in their evidence that the Aggrieved Worker could have returned to the Company earlier than he did. No evidence was provided to the Tribunal to prove that





the Aggrieved Worker could have returned earlier, but the Tribunal accepts the point that the Company was overly concerned about his return to work.

68. The Tribunal accepts the Aggrieved Worker's evidence that he performed tasks on behalf of the Company whilst on vacation leave. The Tribunal does not agree with the Company's argument in making a distinction between whether the tasks performed were substantial or not. The Tribunal accepts that the Aggrieved Worker was on vacation in another country and the Company hired an Accountant to perform the substantial tasks while he was on said vacation. The Tribunal is of the view that the Aggrieved Worker assisted the Company where possible and feasible. With that said, the Tribunal finds that the actions of both the Company and the Aggrieved Worker are consistent with an on-going employer-employee relationship where a senior level manager went on vacation and not one where the contract ended and there were no further obligations between the employer and employee until the new contract period begins.
69. During the Aggrieved Worker's vacation, the Company argued that a number of discrepancies concerning tax administration, credit cards and loans were discovered. From Mr. Dadlani's evidence, he contended that he was unaware of the fragile state of the Company's finances and the Aggrieved Worker's actions and/or inactions concerning same vastly contributed to it as he placed all of his trust in the Aggrieved Worker. The Tribunal does not accept Mr. Dadlani's evidence and finds that Mr. Dadlani was fully aware of the fragile state of the Company's finances prior to the COVID-19 pandemic in not being able to meet its obligations and all the measures taken by the Aggrieved Worker to keep the Company's finances afloat including taking a loan in his (Aggrieved Worker's) name for the benefit of the Company. The Tribunal also finds that the Aggrieved Worker carried out those actions and/or inactions upon the approval of Mr. Dadlani and not on his own volition.
70. The Tribunal notes the evidence of both parties that the Aggrieved Worker's emails were deleted without any discussion or notification while the Aggrieved Worker was on vacation. In addition, it is noted that the Aggrieved Worker was denied access to the Company's emails and files. The Tribunal accepts Mr. Dadlani's evidence that he was aware of the

aforementioned without having any discussion with the Aggrieved Worker and did nothing to reverse it.

71. It is accepted by the Tribunal that due to the COVID-19 pandemic, the Aggrieved Worker was unable to return on the scheduled date of March 23, 2020. The Aggrieved Worker explained the manner in which he returned which was accepted by the Tribunal. Upon the Aggrieved Worker's return, the Tribunal notes that the Company still had concerns regarding the Aggrieved Worker's handling of the Company's finances prior to his vacation and required clarification. It is accepted that two (2) meetings were held with the Aggrieved Worker to discuss same after numerous requests were made by the Aggrieved Worker as to when he can resume duties.
72. The Tribunal notes Mr. Dadlani evidence that he wasn't satisfied with the Aggrieved Worker's responses and that he didn't receive the clarification he sought. The Tribunal accepts Mr. Dadlani's evidence that due to not getting the requested clarification, he was not able to determine or make a decision as to whether the Aggrieved Worker faulted in his performance.
73. It is also accepted that the Aggrieved Worker up to date has not resumed duties at the Company. The Tribunal notes Mrs. Dadlani's evidence that the Aggrieved Worker was still employed to the Company up to January 2021 but he didn't resume work. Mr. Dadlani's collaborated that in his evidence when he stated that the Aggrieved Worker would still have a job if he provided the clarification sought. Further in his evidence, Mr. Dadlani stated that the Aggrieved Worker was on suspension. No evidence was provided to the Tribunal to that effect.
74. Taking into consideration all of the evidence, the Tribunal disagrees with the Company's argument that the Aggrieved Worker's contract came to an end in January 2020. The Tribunal does not accept that the separation was as a result of the Company exercising its right not to renew the said contract as such an argument was inconsistent with the evidence before the Tribunal.



*Shaneel*



75. In considering the matter of procedural fairness, the Tribunal is tasked to look into the Company's dealings with the Aggrieved Worker. The Tribunal finds that the Company was still at the investigative stage of the matter in which the Aggrieved Worker was called to two (2) meetings to answer some questions concerning some issues they had about how he handled the Company's finances. No evidence was provided to the Tribunal as to the outcome of the said meetings.
76. The Tribunal is of the view that if sufficient evidence was found that the Aggrieved Worker should be held accountable for his actions, the provisions of section 22 of the Labour Relations Code would apply. The Tribunal accepts Mr. Dadlani's evidence that he was not yet at the point to make a determination as to whether the Aggrieved Worker could be charged and to commence the disciplinary process. On the other hand, the Tribunal does not accept Mrs. Dadlani's evidence that the meetings on December 30, 2020 and January 8, 2021 constituted disciplinary hearings.
77. The Tribunal finds that the Company's actions prior to the Aggrieved Worker's return to Jamaica where the Company deleted the Aggrieved Worker's emails and blocked his access to the Company's files were not in keeping with good industrial relations practices taking into consideration that the Aggrieved Worker was neither charged with an offence nor given an opportunity to state his case. The manner in which it was done without any notification or discussion was an underhanded move on the part of the Company.
78. In determining this matter, the Tribunal must consider Section 3(4) of the Labour Relations and Industrial Disputes Act, which states:

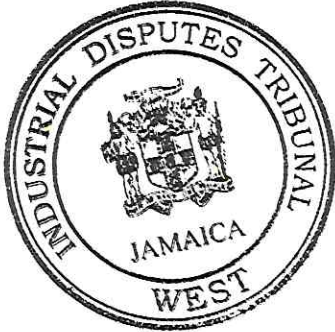
*"A failure on the part of any person to observe any provision of a Labour Relations Code which is for the time being in operation shall not of itself render him liable to any proceedings; but in any proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or 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."*



A handwritten signature in blue ink, appearing to be "R. Lawrence", is written over the page number.

79. It is also important to refer to Section 2 of the Labour Relations Code where it states:

*"Purpose*



*The code recognizes the dynamic nature of industrial relations and interprets it in its widest sense. It is not confined to procedural matters but includes in its scope human relations and the greater responsibilities of all the parties to the society in general.*

*Recognition is given to the fact that management in the exercise of its functions 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...."*

80. The Tribunal finds that the manner in which the Company treated the Aggrieved Worker was unfair. Upon the Aggrieved Worker's return, the Company's actions showed an intention not to continue with the employer-employee relationship as it was the Aggrieved Worker who initiated the calling of the 1<sup>st</sup> meeting and no evidence was provided to show that the Company made any attempt after the meeting held on January 8, 2021 to engage with the Aggrieved Worker to resolve the concerns it had. The Company simply cut ties with the Aggrieved Worker with no decision made as to whether the Company had enough evidence to charge the Aggrieved Worker nor any reason given to the Aggrieved Worker for the separation.

81. In keeping with the Labour Relations Code, the Company failed to recognize that work is a social right and obligation and should not be taken away on a whim. The Tribunal is of the view that dignity was not afforded to Mr. Khurana after many years of service to the Company. The Tribunal accepts the evidence of both parties that Mr. Khurana didn't resume work after returning to Jamaica and has not done so up to date. The Tribunal also notes that the Aggrieved Worker hasn't been paid as well.

82. For the above reasons, the Tribunal finds that the Aggrieved Worker was unjustifiably terminated as the Company's actions were not in keeping with the strict rules of natural justice and showed inconsistency with principles stipulated in the Labour Relations Code.



The Tribunal also finds that the Aggrieved didn't make any effort in seeking alternative employment with a view to mitigate his circumstances. The Tribunal notes the Aggrieved Worker's desire for justice and to be reinstated.


### **AWARD**

In accordance with section 12(5)(c)(iii) of the Labour Relations and Industrial Disputes Act, the Tribunal awards that:

- a. Mr. Khurana be reinstated as Chief Financial Officer, by March 18, 2024 and paid the sum of Seventy Four Thousand United States Dollars (\$74,000USD) ; or
- b. Failure to reinstate him as stipulated in (a), pay him compensation in the sum of Eighty Thousand United States Dollars (\$80,000USD)

**DATED THIS 29th DAY OF FEBRUARY 2024.**

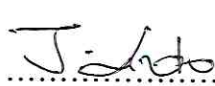


  
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Sadeera Shaw  
Chairman

  
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Rodcliffe Robertson  
Member

  
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Keith Fagan  
Member

Witness

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