

4 Ellesmere Road
Kingston 10

IDT 1/2023

December 11, 2024

Permanent Secretary (Acting)
Ministry of Labour
1F North Street
Kingston

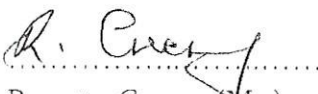
Attention: Mrs. Dione Jennings

Dear Madam,

Re: Dispute between CNX Services Jamaica Limited and Daniel Melbourne over the termination of
his employment by reason of redundancy

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

Yours faithfully,


.....
Royette Creary (Ms.)
for Secretary/Director

Encl.

Similar letter sent to:

Hon. Minister of Labour	
Ms. Gillian Corrods	- Director, Industrial Relations & Allied Services
Mr. Michael Kennedy	- Chief Director, Industrial Relations
Mr. Robert Moore	- Attorney-at-Law
Mrs. Carla-Anne Harris-Roper	- Attorney-at-Law

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 1/2023

SETTLEMENT OF DISPUTE

BETWEEN

CNX SERVICES JAMAICA LIMITED

AND

DANIEL MELBOURNE

AWARD

I.D.T. DIVISION

MRS. SHARON ANDERSON	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
MRS. CHELSIE SHELLIE VERNON	-	MEMBER

DECEMBER 11, 2024

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

CNX SERVICES JAMAICA LIMITED
(THE COMPANY)

AND

DANIEL MELBOURNE
(THE DISMISSED WORKER)

REFERENCE:

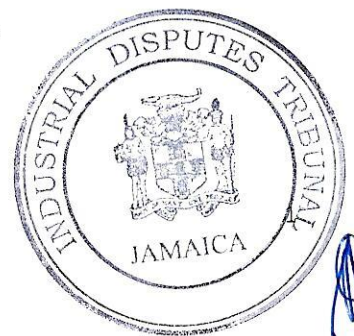
By letter dated January 9, 2023, the Honourable Minister of Labour and Social Security pursuant to Section 11A(1)(a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

“To determine and settle the dispute between Concentrix Services Limited on the one hand, and Daniel Melbourne on the other hand, over the termination of his employment by reason of redundancy”.

By letter dated April 28, 2023, the Terms of Reference was amended by the Honourable Minister of Labour to read as follows:

“To determine and settle the dispute between CNX Services Jamaica Limited on the one hand, and Daniel Melbourne on the other hand, over the termination of his employment by reason of redundancy”.



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:

- | | | |
|-----------------------------|---|--------------------------------|
| Mrs. Sharon Anderson | - | Chairman |
| Mrs. Jacqueline Irons, J.P. | - | Member, Section 8(2) (c) (ii) |
| Mrs. Chelsie Shellie Vernon | - | Member, Section 8(2) (c) (iii) |

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

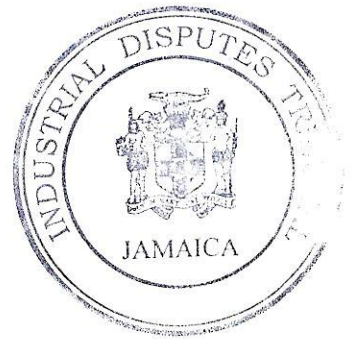
- | | | |
|------------------------------|---|----------------------------|
| Mrs. Carla-Anne Harris-Roper | - | Attorney-at-Law |
| Ms. Judith Leslie | - | Director, People Solutions |

The **Dismissed Worker** was represented by:

- | | | |
|------------------|---|-----------------|
| Mr. Robert Moore | - | Attorney-at-Law |
|------------------|---|-----------------|

In attendance was:

- | | | |
|----------------------|---|------------------|
| Mr. Daniel Melbourne | - | Dismissed Worker |
|----------------------|---|------------------|



SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during twenty-five (25) sittings held between March 22, 2023 and June 4, 2024.

BACKGROUND TO THE DISPUTE:

CNX Services Jamaica Limited hereinafter referred to as the Company is incorporated under the laws of Jamaica since 2017. The Company operates a Business Process Outsourcing enterprise commonly referred to as "Call Centres". It provides services to multiple offshore clients utilizing the services of the Jamaican workforce in two locations, Kingston and Montego Bay.

Mr. Daniel Melbourne was employed by the Company on March 25, 2019, and stationed at the Kingston Branch as an Executive Client Support. On October 23, 2020, he was invited to a meeting and was presented with a letter terminating his employment by reason of redundancy.

Mr. Melbourne protested his termination and through his representative referred the matter to the Ministry of Labour and Social Security. No resolution was reached; hence, the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

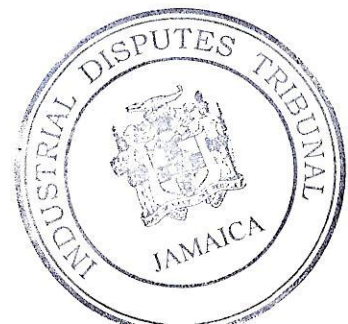
THE COMPANY'S CASE:

1. The Company called two (2) witnesses in support of its case, the Director of People Solutions, Ms. Judith Leslie and Mr. Mikhail McLeod, Workforce Management Supervisor.
2. It is Ms. Leslie's evidence that she commenced employment with the Company in January 2018, in the position of People Solution Manager II, and in July 2021, she was promoted to Senior Manager, People Solutions. She was again promoted in October 2022 to her present position, Director People Solution. Her duties included management and governance of peoples' procedures and policies to include handbooks, data integrity for the Human Resources Department and Payroll Integrity. To maintain these processes, regular Audits are conducted.
3. The Company provides services to several international companies to which it referred to as its '*clients.*' It utilizes the services of the Jamaican workforce who are contracted to work in Kingston and Montego Bay. Ms. Leslie's evidence is that the Company's total employee headcount is approximately Two Hundred and Fifty Thousand (250,000) employees across the globe. The Company had an agreement with its clients to provide workers to meet its requirements. The requirements are for CNX to meet various quality standards in respect of the level of service to the clients' customers as well as to ensure that there are prescribed numbers of employees to be assigned to each '*account*' or '*line of business.*'
4. The Company presently has six (6) lines of businesses between Montego Bay and Kingston. The lines of businesses are staffed by Customer Care Advisors/Agents who interact on the phone with customers.
5. Mr. Daniel Melbourne was employed to the Company on March 25, 2019, in the position of Executive Client Support/Customer Care Advisor and assigned to a line of business. The contract as it relates to this particular line of business between CNX and its client in October 2020 required that

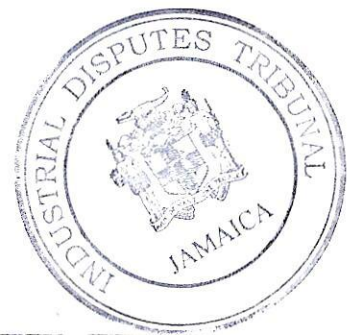


CNX maintain an approved headcount of sixty-eight (68) persons to undertake the functions consigned.

6. Mr. Melbourne worked in the Modern Workplace chat space, where he would communicate via text with customers. His duties entailed responding in a timely manner to customers' inquiries in terms of billing or product information, ensuring that clients concerns are addressed and their needs met, and meeting all Key Performance Indicators (KPI metrics) as set by the client. The KPI is the metrics by which employees' performance is scored by clients.
7. Both Ms. Leslie and Mr. McLeod testified that in March 2020, at the onset of the Covid-19 pandemic, the Company had to make changes in their operations for business continuity. Prior to this time, the Company operated in a physical office space in the two (2) locations. Ms. Leslie stated that because the Company had the safety of all employees at the forefront, it decided to engage in work from home operations. Hence, persons who met certain I.T. criteria, of having broadband internet at a certain speed available at their home, were given the resources by the Company, and were assigned to work from home. Each "work from home" employee was required to sign a Work from Home Attestation, which outlined the expected security measures, the compliance requirement, the responsibility, the care of equipment, and security requirements. These security measures were implemented as it was literally impossible to monitor these workers.
8. The Company, however, continued to pay those employees who did not have internet capability to work from home for several months.
9. To have some level of control, the Company also invested in a Biometric Solution called "Secure CX" which is a facial recognition programme. This investment saw the Company placing cameras on every single device used by the employees on the work from home programme.
10. Both Ms. Leslie and Mr. McLeod testified that the Company received information from its client on a monthly basis as to the approved number of employees, which is referred to as 'head count' that it would need to undertake work.



11. In October 2020, an audit was conducted by the client with the line of business that Mr. Melbourne was assigned to and it was discovered that CNX had inadvertently employed a total of eighty-one (81) persons in the line of business to which Mr. Melbourne was employed. This was in contravention with its contractual obligation. As a result of the overstaffing, CNX was immediately advised by the client to reduce the headcount to meet the requirement of its agreement or else risk losing the entire account. This resulted in a number of employees, including Mr. Melbourne, being terminated by reason of redundancy on October 23, 2020.
12. In doing so, CNX utilized its internal criteria for selection of individuals to be chosen for the redundancy exercise. Based on the immediacy of the directive from the client and the possible large scale impact on the business, the Company was unable to conduct any consultations as would otherwise generally be required under the Labour Relations Code. Ms. Leslie's evidence is that because of safety issues, the consultation process did not take place. Hence, Mr. Melbourne therefore was not communicated with prior to the redundancy exercise.
13. Ms. Leslie testified that on October 23, 2020, the Company met with a group of employees including Mr. Melbourne, and informed them of the Company's decision to terminate their services by reason of redundancy. The state of the Company's business was briefly outlined to them, as was its decision to right-size or restructure to get the headcount that was approved by the client.
14. At the said meeting, a representative from People Solutions was present with the letter of termination pre-prepared. Letters were given to the selected group of employees, including Mr. Melbourne, and he was required to sign the letter, which he did. Both parties retained a copy. An opportunity was afforded to Mr. Melbourne to meet with People Solutions for clarification as to the circumstances of his separation. Mr. Melbourne seized the opportunity to meet as he wanted to understand why he was among those selected. He was told that based on statistics relating to performance, the Company made its decision to terminate him on the grounds of redundancy. Mr. Melbourne, she stated, would have been on a Performance Improvement Plan at the time of his termination as he was failing in one of the metrics called Customer Satisfaction Assessment Team (CSAT). He was placed on the plan during the period June 2020 to August 2020.



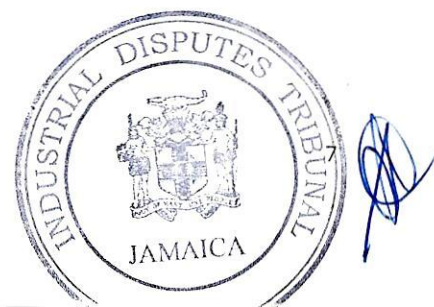
15. Ms. Leslie stated that she would have been involved in redundancy exercise at CNX prior to this. The policy they followed then was that, once the business justification, i.e. the reason for the need for the reduction, the Company would normally see if there was any comparable position to be found to place the affected employee. If there was nothing in terms of reassignment, they would be forced to proceed with the process of termination.
16. Ms. Leslie said that the Company still has the line of business with the client that Mr. Melbourne was assigned to. She stated that, in hindsight, if she had this process to do again, she would have done so differently.
17. Mr. Mikhail McLeod, Workforce Supervisor, testified that he was employed on September 3, 2018, as the Reporting Analyst in the Workforce Department. He prepared various reports concerning the business. His responsibilities included the major deliverables in overseeing the right number of employees forecasted for the workload for the client. He determines the actual number of persons needed. The Workforce Management Team informs People Solution of the number of persons needed for each account months before the headcount requirement. The approved number is supplied by the client. He further stated that CNX would normally have an excess of three (3) to five (5) persons as a buffer for shrinkage due to vacation, sickness, resignation, absenteeism, etc. CNX tried to have a buffer to compensate for attrition, the cost of which is borne by CNX.
18. However, when a recommendation is made by the Workforce Management Team as to the actual headcount, the onus was on People Solution to reassign the excess personnel. Mr. McLeod's testimony is that around that time of the redundancy, recruitment was being done for a new line of business.
19. ***The Company contends that:***
- 1) Mr. Melbourne was not dismissed for lack of performance as the termination was pursuant to a genuine Redundancy exercise occasioned by the lack of roles in the Company to which he could be assigned.
 - 2) the Company acknowledged that, they were unable to undertake the normally expected consultation process as stipulated by the Labour Relations Code. The circumstances of Mr. Melbourne's case fit squarely into an accepted exclusion to the process in their view.



- 3) the Company had challenges as a result of the Covid 19 Pandemic; it therefore had to take actions that were not contemplated to prevent loss of business. The occurrence at the time left the Company no choice but to terminate Mr. Melbourne by way of redundancy.

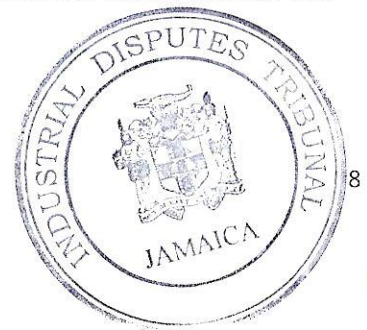
THE AGGRIEVED WORKER'S CASE:

20. The sole witness was the Aggrieved Worker, Mr. Daniel Melbourne.
21. Mr. Daniel Melbourne was employed by CNX Services Jamaica on March 25, 2019, as Executive Client Support /Customer Service Advisor. His duties entailed text communication with clients. He was not privy to the client's personal information and was not cited for any wrongdoing or fraudulent activities.
22. Mr. Melbourne, in Examination in Chief, testified that normally he worked with the Client on an online platform at the NCB Towers. However, with the onset of Covid 19 Pandemic, he was required to work from home.
23. He admitted to not meeting his set target for the month of August 2020. Mr. Melbourne testified that he was on a Performance Improvement Plan (PIP) for the period June up to September 2020, and during that time he was supported by the Quality Analyst and his Support Team to improve and assess his performance. His Support Team met weekly, but at the end of the period he was not told if he was successful in achieving his set target. However, he knew that he was trending at a satisfactory rate.
24. On October 23, 2020, he received communication from People Solutions inviting him to a meeting of even date. He attended the meeting, and in attendance were Senior Company Representatives including Mr. Francis Pukoo and Ms. Judith Leslie.
25. He testified that Ms. Leslie addressed the meeting, stating that the Client to whom he was assigned, was right-sizing globally due to the Covid-19 Pandemic and this would result in his position being made redundant with immediate effect. She advised him that there were no other options at the time. He then enquired as to why CNX did not transfer him to another account, as he was aware of



recruitment being done for a new line of business. Ms. Leslie informed him that the positions were already filled. The meeting started approximately 4:00 p.m. and ended before 5:00 p.m.

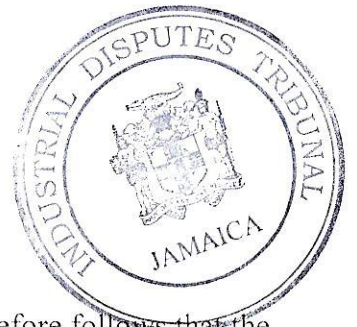
26. He had no communication with People Solution regarding a redundancy exercise, prior to his termination of employment.
27. She instructed him that for further clarification on the issue of him being selected for redundancy, he should make contact with Julene Singh from the Human Resources Department. He did on October 24, 2020, via his personal email as by this time, he was disconnected from the Company's system. She responded via email, inviting him to join a virtual meeting on Wednesday, October 28, 2020. At the meeting, he enquired about the selection process for the redundancy exercise. He was told by Ms. Leslie that he was selected on the basis of not meeting the target for four (4) months.
28. He testified that during the meeting, Ms. Leslie was sharing her screen with him, and he observed that for the month of September 2020 the data on his Performance Improvement Plan (PIP), was incorrect as he was trending at 4.68 based on the Quality Analysts' review. He also noticed that the process the Quality Analysts (QAs) used called "Scrubbing" caused changes from a score of 4.68 to 4.08. At that point he enquired of Ms. Leslie if she was familiar with the scrubbing process, to which she said she was not familiar with the operations term. Mr. Melbourne explained to the Tribunal that the scrubbing process was used by the QA to determine if the agents were performing.
29. He stated that he brought to Ms. Leslie's attention that the Customer Satisfaction Assessment Team (CSAT) data presented was not a true reflection of his performance as it was unaudited and averred that there was a failure by the Company to complete the relevant audit process to remove incorrect (uncontrollable) scores that negatively impacted his performance scores. She then stated that they were in the process of reviewing the CSAT report of persons who were made redundant to have them placed based on the revisions.
30. Mr. Melbourne testified that he was aware that a new line of business was coming on stream and persons were being recruited and that some members of his CPR team were placed on the new line of business. However, to date, she had not communicated with him on that issue. He stated that he was also aware that persons had been laid off following his termination.



31. Subsequent to his termination, he did some research on the Company and discovered that they were recruiting for more than a thousand (1,000) vacancies in Jamaica over the next six (6) months due to new lines of business. Mr. Melbourne stated that having heard Ms. Leslie's testimony before the Tribunal that his status with CNX indicated that he was eligible for re-employment and that there was nothing preventing him from reapplying. He applied, but was not contacted.
32. It is Mr. Melbourne's testimony that he continued in his endeavour to seek employment after his termination by "drop-offs" and attending job fairs but to date was unsuccessful. In one instance, an employer reached out to him from a call centre in 2021, but they said they did not receive a favourable response from his previous employer, CNX, so they were unable to move forward with his application. Under Cross-Examination, Mr. Melbourne stated that he had not been working since October 2020. He, however, retracted his statement by saying he did in fact work at Terra Nova for a period of two (2) or three (3) months but became ill and therefore was not confirmed in the position, and because it was for a short period, he did not put it in his updated resume.

33. *The Dismissed Worker contends that:*

- 1) the Company was not correct in the manner in which his services were terminated.
- 2) the principle of Natural Justice was violated.
- 3) he was entitled to compensation for breaches of the Employment (Termination and Redundancy Payment) Act and the Labour Relations and Industrial Disputes Act.
- 4) there was no change in the needs of business.
- 5) he is requesting reinstatement or if not, compensation.



THE TRIBUNAL'S FINDINGS:

34. Mr. Daniel Melbourne was employed to CNX Services Limited and it therefore follows that the decision to terminate his services by reason of redundancy was solely a decision made by the Company.
35. The Tribunal acknowledges that the Company has a right to restructure and reorganize as it deems fit. It has a right to change work processes and introduce new ones where necessary and to manage its operation in the most efficient way possible. However, the Tribunal concludes that the management of CNX had a responsibility to inform itself of the relevant piece of labour legislation governing employment.

36. It is to be noted that based on Mr. Melbourne's length of employment with the Company, he would not have been qualified for redundancy payments, having not reached the statutory threshold of a 104 weeks, which is the period of employment that needs to be attained in order to qualify for redundancy payments.
37. The Tribunal also notes that one of the criteria used to determine the persons to be made redundant was performance. It is the unchallenged evidence of Mr. Melbourne that his score was incorrect as the CSAT data presented was not a true reflection of his performance as it was unaudited. He was trending at 4.68 and the process of scrubbing changed the score to 4.08. The Tribunal finds this very interesting that the Company did not seek to address this issue
38. The Tribunal will now turn its attention to the question as to whether or not the Company in terminating Mr. Melbourne's contract of employment, did so in keeping with good industrial relations practices.
39. On October 23, 2020, the Company met with a group of employees including Mr. Melbourne and informed them of its decision to terminate their services by reason of redundancy. This was done with immediate effect.
40. The Company in its submission acknowledges that it was unable to take the normally expected consultation exercise as stipulated under that Labour Relations Code. The Company's explanation is that the circumstances dictated swift action as a result of the audit of their Client and the impending risk associated with the Agents' knowledge due to the sensitivity of the operations. There is no evidence, however, to show that Mr. Melbourne was involved/implicated in any wrongdoing or that he put the Company at risk by any fraudulent activities.
41. The Tribunal concludes that the Company implemented effective safeguards and was able to disconnect Mr. Melbourne from the system with immediate effect on his termination. The Company therefore had full control to minimize any incidents that may arise regarding their fears of any fraud being committed. It is also the undisputed evidence of Mr. Melbourne that he was not privy to the clients' personal information.



42. The Tribunal finds it appropriate to refer to Paragraph 2 of the Labour Relations Code which states:

“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 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.

43. Based on the above, the Tribunal concludes that Mr. Melbourne was not given the respect and dignity accorded to him as a worker, as he was summoned to a meeting on October 23, 2020, and given a pre-prepared letter of termination with no prior communication.

44. At the meeting on October 23, 2020 where Mr. Melbourne was terminated, he requested certain information which he considered necessary. It is important at this juncture for the Tribunal to point out that the Labour Relations Code at Part V Communication and Consultation, paragraph 19(b) provides as follows:

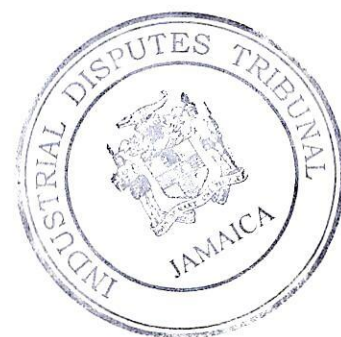
(b) Consultation is a joint examination and discussion of problems and matters affecting management and workers. It involves seeking mutually acceptable solutions through a genuine exchange of views and information. Management should take the initiative in establishing and regularising consultative arrangements appropriate to the circumstances of the undertaking in co-operation with the workers or their representatives.

(i) Management should ensure that in establishing consultative arrangements:

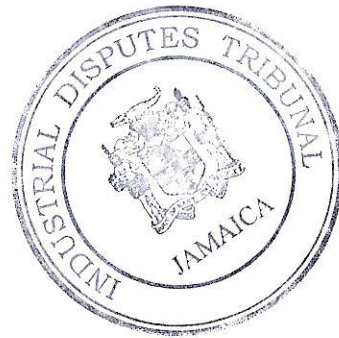
(a) all the information necessary for effective consultation is supplied;

(b) there is adequate opportunity for workers and their representative to expose their views without prejudicing their positions in any way;

45. The wording and interpretation of the above definition of “consultation” in the Labour Relations Code gives a clear understanding that the onus of providing the relevant information rests with the employer, in this case, CNX Services Jamaica Limited.



46. In light of the foregoing, the Tribunal concludes therefore, that notwithstanding the fact that there may be cogent reasons to conclude that a redundancy situation existed; the execution of the exercise has failed the test of consultation as required under the Labour Relations Code.
47. It is Ms. Leslie's testimony that they had no issue with Mr. Melbourne being re-employed by the Company and averred that he could reapply.
48. The Tribunal therefore concludes that Mr. Melbourne's termination of employment was unjustifiable and therefore makes the following award.



THE AWARD:

54. The Tribunal, in accordance with the provisions of Section 12(5) (c) (i) of the Labour Relations and Industrial Disputes Act 1975, hereby awards that Mr. Daniel Melbourne be reinstated effective January 6, 2025, with ninety-five (95) weeks basic pay at the current rate.

DATED THIS 11th DAY OF DECEMBER 2024



.....
Mrs. Sharon Anderson
Deputy Chairman

.....
Mrs. Jacqueline Irons, J.P.
Member

.....
Mrs. Chelsie Shellie Vernon
Member

Witness

.....
Royette Creary
Secretary to the Division