

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 39/2014

SETTLEMENT OF DISPUTE

BETWEEN

COURT MANAGEMENT SERVICES

AND

MRS. JACQUELINE SCOTT-CROSSLEY

AND THE

AWARD

I.D.T. DIVISION

MR. DONOVAN HUNTER	-	CHAIRMAN
MR. TREVOR GRAHAM	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

JUNE 25 2015

INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
COURT MANAGEMENT SERVICES
(THE COMPANY)
AND
MRS. JACQUELINE SCOTT-CROSSLEY
(THE DISMISSED WORKER)

REFERENCE:

By letter dated October 30, 2014, the Honourable Minister of Labour and Social Security in accordance with Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred 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 Mrs. Jacqueline Scott-Crossley on the one hand and Court Management Services on the other hand over the termination of her contract of employment.”

DIVISION:

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

Mr. Donovan Hunter	-	Chairman
Mr. Trevor Graham, J.P.	-	Member, Section 8(2) (c) (ii)
Mr. Clinton Lewis	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Miss Althea Jarrett	-	Attorney-at-Law
Miss Catherine Williams	-	Attorney-at-Law
Mrs. Carol Hughes	-	Principal Executive Officer (PEO)

The **dismissed worker**, Mrs. Jacqueline Scott-Crossley was represented by:

Mrs. Karene Stanley Jones	-	Attorney-at-Law
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In attendance:

Mrs. Jacqueline Scott-Crossley	-	the Dismissed Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during eleven sittings held between December 19, 2014 and May 19, 2015.

BACKGORUND

Courts Management Services hereafter referred to as CMS is a department of the Ministry of Justice established in 2010 by the Government of Jamaica (GOJ) to provide administrative services to the judiciary and the courts, thereby separating the administrative functions of the judicial and executive arms of Government. The Chief Justice of Jamaica is the head of the judiciary and has overall responsibility for all the courts in Jamaica. CMS is headed by the Principal Executive Officer (PEO) who is answerable to Parliament and pursuant to the

provisions of the Financial Administration and Audit Act (the Act), is charged with the responsibility of accounting for expenditure on any service in CMS, in respect of which monies have been appropriated under the Act of any other enactment. The intent of CMS is to facilitate a more efficient court system, an independent court system, judiciary and ultimately an improved justice system.

By letter dated February 18, 2013 Mrs. Jacqueline Scott-Crossley was appointed Special Projects Director by way of a fix contract for two (2) years with approval from the Ministry of Finance. The post is not an established post under the Established (General) Order 2012. Hence, the terms of the contract are in keeping with the Ministry's guidelines for fix term contract officers.

In September 2013, Mrs. Carol Hughes was appointed to the post of Acting PEO for CMS. Having taken over the responsibilities of the PEO, Mrs. Deborah Gardner found that Mrs. Crossley was operating outside the scope of her terms of reference and was subsequently given a letter of termination dated October 17, 2013.

Mrs. Crossley protested her dismissal and employed an attorney to represent her in the pursuit of justice. Please see below letter of termination.

"October 17, 2013

*Mrs. Jacqueline Scott-Crossley
c/o Court Management Services
25 Dominica Drive
Kingston 5*

Dear Mrs. Scott-Crossley,

Kindly refer to Clause 6 (a) of your contract as Special Projects Director with Court Management Services which gives the Principal Executive Officer the authority to terminate your services with a month's notice or pay in lieu of notice.

This serves to inform you that your contract will be terminated with effect from October 31, 2013. I understand from you that you will proceed on vacation leave as of Friday, October 18, 2013. When you leave this afternoon you will not be required to return to the office. You will be paid your salary and allowances for the month of October, 2013 and paid another month's salary in lieu of notice.

Please hand the office keys, door pass, equipment, telephone and any other property of CMS over to Ms Sydian Brissett this afternoon.

Thank you for the work you have done while at Court Management Services and every good wish for the future.

Yours sincerely,

*Carol Hughes (Mrs.)
Principal Executive Officer (Acting)*

*c.c. Ms. Michelle Muir
Senior Director, Human Resource Management & Administration*

*Mr. Lascelles Ellis
Principal Financial Officer*

COURT MANAGEMENT SERVICES' CASE

On November 9, 2011, Mrs. Jacqueline Scott-Crossley and the Government of Jamaica through the CMS established a contract to provide services as a Management Consultant to CMS for a term of twelve (12) months. The PEO was Mrs. Deborah Gardner.

By letter dated December 7, 2012 to the Chief Personnel Officer in the Office of the Services Commission (OSC), Mrs. Deborah Gardner requested approval for the temporary employment of Mrs. Jacqueline Scott-Crossley, as Director, Procurement and Administration, an established post under the Civil Service Established (General) Order 2012 for the period of four (4) months with effect from December 12, 2012. The letter pointed out that Mrs. Crossley was a suitable candidate for the post as she is aware of the operations of the CMS and has displayed strong managerial skills in the performance of her duties. The scope of Mrs. Crossley's responsibilities would be as follows:

- a) To establish a process for the inventorisation of assets and goods for CMS and the Courts.
- b) To manage and co-ordinate the process for establishing and updating an efficient asset and inventory system in the CMS, for the Court of Appeal, Supreme Court , Resident Magistrates Court and Family Court.
- c) To advise on and support the Principal Finance Officer in resolving financial issues, ensuring efficiency in operations.

By letter dated December 13, 2012 Dr. Lois Parkes the Chief Personnel Officer in the Office of the Services Commissions (OSC) informed Mrs. Gardner that her request for approval to appoint Mrs. Crossley, temporarily as Director of Procurement and Administration was declined. However, inspite of the OSC denial of Mrs. Crossley to the post, Mrs. Gardner allowed her to perform the functions of same.

By the letter dated February 7, 2013 to the Deputy Financial Secretary in the Ministry of Finance Mrs. Gardner requested the approval of the appointment on contract of Mrs. Crossley to perform technical administrative services.

Mrs. Crossley was appointed on a two (2) years contract as Special Projects Director. The contract contained a termination clause which so far as is relevant reads:

- a) "The PEO on behalf of the Government may, at any time terminate your employment by giving you one (1) month's notice.

- b) You may at anytime terminate this engagement by giving one (1) month's notice in writing."

Mrs. Carol Hughes upon her appointment as Acting PEO in September 2013 found out that Mrs. Crossley was performing functions outside the scope of her terms of reference. Specifically, she found Mrs. Crossley to be performing functions related to procurement which fell under the post of Director Procurement and Administration, a post Mrs. Crossley was found unsuitable to perform by the OSC. Mrs. Crossley was also performing other functions that were the remit of other divisions. These include Human Resource Management and Administration, the Legal Unit, the Finance and Accounts Division and the Strategic Policy and Planning Division all of which had the appropriate personnel to carry out the required task. This arrangement was clearly unnecessary and costly due to the duplication of tasks.

The PEO, as the Accounting Officer for CMS and is aware of her duties under the Financial Administration and Audit Act is fiscally responsible for the use of public funds, decided in the circumstances that it was in the best interest of the CMS and the Government that the contract of Mrs. Crossley be terminated pursuant to the termination clause of her contract. The Acting PEO met with Mrs. Crossley on October 17, 2013 and informed her of the basis on which her determination had been made to terminate her services. Mrs. Crossley was therefore informed by the PEO that her services were being terminated in accordance with the termination clause of her contract.

Courts Management Services' Contention

- a) CMS contends that Mrs. Crossley contract was lawfully terminated and her dismissal was not unjustifiable. CMS acknowledges that Mrs. Crossley is entitled to her prorated gratuity.
- b) The Acting PEO was entitled to determine, as she did on October 17, 2013, that the job of Special Projects Director was superfluous and unnecessary. She so determined and advised Mrs. Crossley and fully informed her of the basis on which her termination was made. Mrs. Crossley was not terminated for cause and her work performance was generally good.

THE DISMISSED WORKER'S CASE:

By contract dated February 21, 2013, Mrs. Jacqueline Scott-Crossley was engaged by Court Management Services as Special Projects Director on a fixed term contract basis for two (2) years commencing on the 25th day of February 2013.

In September 2013, Acting PEO, Mrs. Carol Hughes, Attorney-at-Law assumed duties while the PEO, Mrs. Deborah Gardner proceeded on study leave.

Mrs. Crossley contends that from as early as September 17, 2013 she had been seeking to meet with her new boss, Mrs. Hughes to update her on projects that she was spearheading. A meeting, however, was never convened until October 18, 2013 at the request of Mrs. Crossley before proceeding on vacation leave. Prior to the meeting, communication between Mrs. Hughes and Mrs. Scott-Crossley was limited to a few telephone conversations/emails and Microsoft Excel generated reports on the programmes and projects Mrs. Scott-Crossley spearheaded. During the meeting Mrs. Hughes informed Mrs. Scott-Crossley that she had heard a lot of negative comments about her. She said among other things.

- a) "I have heard a lot of negative comments about you. I tried to find out why because I am not in the habit of listening to people but there are too many comments. Why do you think that is?"
- b) You have been working on some things and I do not think you are the best person to work on these. It requires a legal mind.
- c) You have given me a lot of paper. Most of the things on my desk are from you.
- d) You applied for three jobs and the Office of the Services Commission declined all of them so what are you doing in Procurement Unit since the Office of the Services Commission did not accept your application, so in that case I do not think you should be here so I will have to terminate your services."

After the meeting, Mrs. Hughes advised Mrs. Scott-Crossley that when she left on that day to go on vacation leave she was not to return. Before she departed from her office on October 18, 2013 she was given a letter terminating her services. There was no reason given for her termination in the letter.

The termination was in breach of due process. Mrs. Scott-Crossley was unclear of what were the reasons for her termination. She was not given an opportunity to respond to CMS' claim.

TRIBUNAL'S RESPONSE

There are two issues that have to be addressed.

- a) Did Mrs. Hughes, the Acting PEO act within her authority in terminating the contract of Mrs. Jacqueline Scott Crossley?
- b) Were the correct procedures followed in the termination of Mrs. Jacqueline Scott-Crossley's contract consistent with fair labour practices?

In respect of (a) above the Tribunal need not spend much time on the question. Mrs. Carol Hughes assumed the post of Acting PEO in September 2013. As an Organization Analysis and an Attorney-at-Law, she observed certain inefficiencies within the organization of CMS. The Special Projects Director, Mrs. Jacqueline Scott-Crossley drew her attention for several reasons.

- a) She was providing oversight for several divisional units within the organization, with extensive preoccupation in Procurement, Planning and Administration.
- b) The post of Special Projects Director was not an established post under the Civil Service Establish (General) Order 2012 made pursuant to the Civil Service Establishment Act.
- c) Mrs. Scott-Crossley was on a fixed term contract for two (2) years effective February 2013 and the function she provided could have been carried out by competent personnel within the respective units.

Hence, Mrs. Hughes concluded that the job of Special Projects Director was superfluous and unnecessary. Subsequently, Mrs. Hughes applied her authority and terminated Mrs. Jacqueline Scott-Crossley's employment under clause 6(a) of her employment contract.

The Tribunal recognizes the authority of Mrs. Hughes in her capacity as the Chief Administrator of CMS, hence, it will not interfere with her decisions that may very well impact the efficiency of the organization.

The Tribunal will now turn to (b) above. In dealing with this question it will make reference to the Labour Relations Code which is a supplementing document to the Labour Relations and Industrial Dispute Act (LRIDA). Section 3 (i) of the LRIDA introduces the purpose of the Labour Relations Code that contains such practical guidance as in the opinion of the Minister would be helpful for the purpose for promoting good Labour Relations in accordance with:-

- a) ...
- b) ...
- c) *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.*

Subsection (4) of the LRIDA goes on to state the following:

“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 a Board in determining that question.”

Shall being the operative word.

The Labour Code will then become a source of reference to determine if the termination of Mrs. Scott-Crossley was properly carried out in such a way that conformed to fair labour relations practices.

The evidence indicated that the path to Mrs. Scott-Crossley's termination began when Mrs. Hughes assumed the post of Acting PEO. Unfortunately, she failed to meet with Mrs. Scott-Crossley, Special Projects Director, although Mrs. Hughes is Mrs. Scott-Crossley first report.

Mrs. Scott-Crossley was providing oversight for the Procurement Unit when in fact there was not a Director of Procurement in place. Mrs. Hughes reasoning for not meeting with Mrs. Scott-Crossley seems baseless. She thought that Mrs. Scott-Crossley having applied for the position of Director of Procurement and was turned down by the OSC was enough not to have met with Mrs. Scott-Crossley. If that was to be accepted as an acceptable reason then a meeting would have been more so important to ascertain what her work plan had to contribute. Having done so, then Mrs. Scott-Crossley would have been informed by Mrs. Hughes of her concern about her working in Procurement. Mrs. Scott-Crossley terms of reference requires her to report to the Acting PEO and to give her the needed administrative support, however, Mrs. Hughes saw no need for her support. Mrs. Scott-Crossley was never informed of Mrs. Hughes' concerns nor was she given the slightest indication a part from her silence.

The evidence indicates that even the period between the time Mrs. Hughes assumed responsibility as Acting PEO and the termination of Mrs. Scott-Crossley's employment, she (Mrs. Hughes) was constantly kept up-to-date with the work in progress by telephone, emails and Microsoft Excel generated reports. Indications are that Mrs. Scott-Crossley was generally ignored. On October 18, 2013, Mrs. Scott-Crossley attended her first meeting with Mrs. Hughes. There was no other person in the meeting. The meeting was sought by Mrs. Scott-Crossley to update the Acting PEO on projects being pursued, before proceeding on vacation leave. Indications are based on the evidence of Mrs. Scott-Crossley which we find to be creditable.

At the end of the meeting Mrs. Scott-Crossley was handed a letter of termination. Submissions by the management of CMS at the Tribunal revealed that Mrs. Scott-Crossley was terminated without cause.

What went wrong?

Mrs. Deborah Gardner, the then PEO saw the wisdom in appointing Mrs. Scott-Crossley as Special Projects Director on a fix contract for two (2) years effective February 2013.

Mrs. Scott-Crossley established herself as a competent employee and she had no disciplinary issues. She had every reason to believe all would be well with respect to serving out her tenure.

The fact that Mrs. Scott-Crossley's contract could be terminated by way of 4 weeks notice or pay in lieu of notice, for any reason for that matter, does not mean her job should be treated as an article of trade.

The Tribunal finds it most appropriate to refer to the following:

1. Clause (2) of the Labour Relations Code states

“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 continuing of employment, security of earnings and job satisfaction.”

2. **Village Resorts Limited and the Industrial Disputes Tribunal and Uton Green representing the Grand Lido Negril Staff Association (1988 35 JLR 292)** where Mr. Justice Rattray P made reference to Smith C. J's quote in the R. v. Minister of Labour and Employment, Industrial Disputes Tribunal, Devon Barrett et al ex-parte West Indies Yeast Co. Ltd. from the learned author of “ The Impact of Unfair Dismissal” at paragraph 11:

“A person's job can no longer be treated purely as a contractual right which the employers can terminate by giving the appropriate contractual notice.”

Mrs. Scott-Crossley was not afforded the dignity that she had a right to. In examination in Chief, Mrs. Scott-Crossley was asked that with her experience in Human Resource, if a case of overstaffing, excessive spending or if a position has become superfluous and unnecessary how would she have handled the termination?

Her response was she would:

- i. “Arrange a meeting with the individual with another H.R person being a part of the meeting

- ii. Invite the individual to have a representative with him/her at that meeting.
- iii. Give the reason why a termination of the contract is necessary
- iv. Give the individual an opportunity to respond
- v. Make an offer appropriate to the circumstances.
- vi. Give the individual sometime to consider the proposal.”

This approach would have certainly done a lot in harmonizing the process of termination by recognizing the need for proper communication and most importantly, the principle of due process would have been recognized.

Clause 19 (b) of the Labour Relations Code addressed the importance of consultation.

”Consultation

Consultation is the 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 representatives to expose their views without prejudicing their positions in any way;*
- c) *senior members of management take an active part in consultation;*
- d) *there is adequate opportunity for reporting back.*

(ii) *Where formal arrangements exist, the rules and procedures as well as the subjects to be discussed should be agreed between representatives of management and workers.”*

Security of Mrs. Scott-Crossley

There was evidence to suggest that Mrs. Scott-Crossley had difficulty in finding employment and had to settle for a job paying less than her job with CMS. Her experience in finding employment having sent out eighteen (18) applications between October 2013 to February 2014 left her

concluding that the way in which she was terminated was in fact a deterrent in finding employment. Again the Labour Relations Code frowns on the way in which Mrs. Scott-Crossley's termination was done.

Clause 11 of the Labour Relations Code states, under Security of Worker:

'Recognition is given to the need for workers to be secure in their employment, and Management should in so far as is consistent with operational efficiency.

- i. ...*
- ii. ...*
- iii. ...*
- iv. actively assist workers in securing alternative employment and facilitate them as far as is practicable in this pursuit.'*

Her letter of termination could have been written in such a way, so as to eliminate the potential fear of a future employer that her termination was due to unacceptable workplace conduct. Every effort should have been made to point to the positive contribution that she could have made to any worthwhile enterprise.

CMS should have been willing to speak personally with the representative of any company that may have wanted to have sought confirmation with regards to Mrs. Scott-Crossley's conduct and competences.

In short, the Tribunal is suggesting that there was ample opportunity for CMS to have made an effort in giving Mrs. Scott-Crossley support in achieving future employment. This effort would be consistent with clause 11 (iv) Labour Relations Code.

Based on the facts gleaned the Tribunal finds that Mrs. Jacqueline Scott-Crossley was unjustifiably dismissed and awards accordingly.

AWARD

In accordance with Section 12(5)(c) (ii) of the Labour Relations and Industrial Disputes Act (LRIDA) the Tribunal hereby orders that Mrs. Jacqueline Scott-Crossley be paid compensation in an amount of \$2, 880, 000.00

DATED THIS 25th DAY OF JUNE, 2015



Donovan Hunter

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Donovan Hunter
Chairman

Trevor Graham

.....
Trevor Graham
Member

Clinton Lewis

.....
Clinton Lewis
Member

Witness:

Royette Creary
.....
Royette Creary
Secretary to the Division