

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 39/2022

SETTLEMENT OF DISPUTE

BETWEEN

CROWNE INDUSTRIES LIMITED

AND

MR. IAN MURRAY

AND THE

AWARD

I.D.T. DIVISION

MRS. SHARON ANDERSON	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
DR. DENESE MORRISON, J.P.	-	MEMBER

June 28, 2023



INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**CROWNE INDUSTRIES LIMITED
(THE COMPANY)**

AND

**MR. IAN MURRAY
(THE DISMISSED WORKER)**

REFERENCE:

By letter dated October 3, 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 described therein:-

The Terms of Reference were as follows:

“To determine and settle the dispute between Crowne Industries Limited on the one hand, and Mr. Ian Murray on the other hand, over the termination of his 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:

Mrs. Sharon Anderson	-	Chairman
Mrs. Jacqueline Irons, J.P.	-	Member, Section 8(2) (c) (ii)
Dr. Denese Morrison, J.P.	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

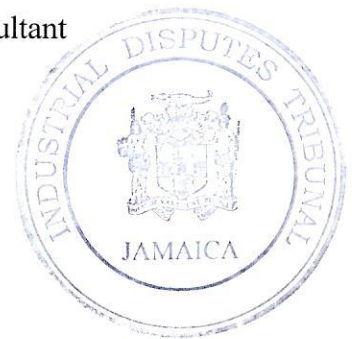
Mr. Ishmael Gafoor	-	Managing Director
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The **Dismissed Worker** was represented by:

Mr. John Levy	-	Industrial Relations Consultant
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In attendance was:

Mr. Ian Murray	-	Dismissed worker
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SUBMISSIONS AND SITTINGS:

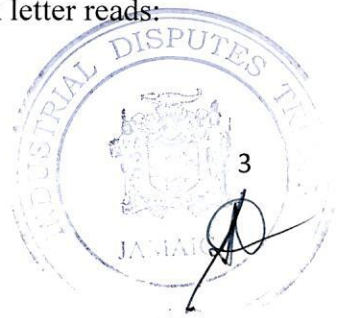
1. The Panel that was initially selected to hear and settle the dispute consisted of Mrs. Sharon Anderson, Chairman, Mrs. Jacqueline Irons, Member and Mr. Clinton Lewis, Member. It should be noted that at this stage, three (3) sittings were convened and whilst the Dismissed Worker and his Representative were present at all three (3) sittings, the Representative of the Company, Mr. Raymond Samuels appeared at the 1st sitting, no one appeared for the Company at the 2nd sitting and on the 3rd occasion, the Managing Director, Mr. Ishmael Gafoor appeared. Apart from agreeing to the Terms of Reference at the 1st sitting, nothing else happened.
2. In March 2023, Mr. Clinton Lewis, Member died. He was replaced by Dr. Denese Morrison. The parties were written to in accordance with Section 8 (4) of the Labour Relations and Industrial Disputes Act (LRIDA) and informed that the matter will begin

de novo. April 17 & 20, 2023 were confirmed for hearing. Notwithstanding, the Tribunal writing to the Company and its Representative inviting them to the hearing, no one showed for the hearing scheduled April 17, 2023. The Tribunal decided that it would commence hearing the matter on April 20, 2023 and instructed the Secretary to inform the Company and advise Mr. Samuels in writing, to attend or have a Representative present, failing which the Tribunal would proceed to hear the matter *ex-parte*. This was in accordance with Section 16A of the Labour Relations and Industrial Disputes Act, 1975 (LRIDA).

3. On April 20, 2023, only the Managing Director appeared virtually for the Company. The Tribunal whilst being able to hear Mr. Gafoor, could not see him on the screen which is a procedural requirement. Consequently, the hearing had to be adjourned and April 27, 2023 confirmed for the next sitting. Mr. Gafoor was instructed to have his Representative present at the next hearing. The Secretary was again instructed to write to Mr. Samuels and to inform him of the scheduled date and that failing to attend, the Tribunal would proceed to hear the matter *ex-parte*.
4. The Tribunal sat on April 27, 2023; however, there was no Representative from the Company. The Panel, after ascertaining from the Secretary that letters with its decision had been sent to both Mr. Gafoor and Mr. Samuels, proceeded to hear the matter *ex-parte*.

BACKGROUND TO THE DISPUTE:

5. Crowne Industries Limited (*hereinafter referred to as the Company*) is involved in the manufacturing of steel and plastic items since 1984. The Company is located at 4 East Bell Road, Kingston 11.
6. Mr. Ian Murray was employed to the Company as a Machine Operator from March 10, 2010. He was terminated by letter dated May 7, 2020. The termination letter reads:



"May 7, 2020

*Ian Murray
20 Harvery Rd
Kingston*

Ian Murray,

You are terminated on the grounds of insubordination to a Director of the Company, and on many occasions, you have failed to carry out instructions by your supervisors.

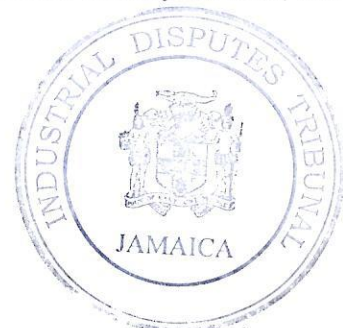
You were rude and made threatening remarks to a Director of the Company on May 07, 2020, you are hereby terminated effective today.

*I. Gafoor
Director"*

7. Mr. Murray challenged his termination and sought the intervention of the Ministry of Labour and Social Security, however, the matter was not resolved, hence it was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE BASED ON ITS BRIEF:

8. Crowne Industries Limited employed over one hundred (100) employees. Sometime before May 7, 2020, Mr. Franklin Guthrie, a member of staff died. Mr. Ian Murray's mother had a relationship with Mr. Guthrie. Mr. Murray's mother visited the premises of Crowne Industries and was at the gate misbehaving and demanding funds for Mr. Guthrie's burial. The situation was reported by the factory supervisor, Ms. Pearson to Mrs. Gafoor who requested to speak with Mr. Murray. She requested of him to have his mother cease her misbehaviour. Mr. Murray became angry, rude and made threatening remarks to Mrs. Gafoor. He was asked to leave the factory. The matter was reported to the Hunts Bay Police Station and the request was made to have Mr. Murray and his mother removed from the premises. Mr. Murray was terminated on May 7, 2020, the same date of the incident.



THE DISMISSED WORKER'S CASE:

9. Mr. Ian Murray was the only witness called in support of his case. He stated that he had been working with the Gafoors for approximately fifteen (15) years with different companies that they owned. He worked as a Machine Operator with the Company, making Quarter Wire and Barbed Wire. Mr. Murray performed other duties when he was not operating the machine. It is Mr. Murray's evidence that he had never been disciplined by the Company. He testified that his stepfather, Mr. Guthrie worked with the Company and taught him how to use the machine. Mr. Guthrie died in 2020 resulting in his mother seeking financial assistance from the Company.
10. Mr. Murray, in examination in chief, informed the Tribunal that on Wednesday, May 6, 2020 at 4:30 p.m., Ms. Pearson, a supervisor called him and gave him two (2) letters to give to his mother. When he reached home his mother opened the letters and saw two cheques written in the amount of \$50, 000.00 each. His mother told him to take back the cheques to the Company in the morning. However, in the morning she told him to leave the cheques on the table and so he left them and went to work.
11. On May 7, 2020 at around 9:30 a.m. while he (Murray) was on duty in the production area, Ms. Roach, another supervisor told him that Mrs. Gafoor wanted to speak to him on the phone. Mr. Murray stated that Mrs. Gafoor, wife of the Managing Director, told him that his Mother came to the Company and behaved badly. Mr. Murray stated that his response to her was, "*Maam, a nuh mi mada mi work wid, a nuh mi mada a pay mi*". He said that Mrs. Gafoor told him that he would pay the price and he (Murray) asked her "*Wa kina price mi haffi pay, a fyah you a guh fyah mi, an mi nuh duh nutt'n. Suh she deh a neng, neng, neng suh till she heng up.*" After Mrs. Gafoor hung up the phone, Mr. Murray gave the phone back to Ms. Roach.
12. On his way back to his work station, Ms. Pearson informed him that he was fired. Mr. Murray asked about compensation for his fifteen (15) years of service. He remained on the compound and later that day Hawkeye Security was called to escort him off the

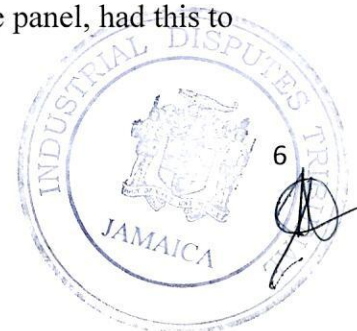


premises. Mr. Murray called 119 and the Police came to assist him and spoke to Mr. Gafoor by telephone. He was told by the Police to leave the compound and return on Friday, May 8, 2020 when he would be paid. Mr. Murray testified that he returned as instructed and was only paid for three (3) days, hence, he went to the Ministry of Labour and Social Security where he reported the matter.

13. Mr. Murray contended that his rights were breached as an employee. He was not charged with any offence and he was not given the opportunity to defend himself. Mr. Murray contends that the Company was in clear violation of Section 22 of the Labour Relations Code and the rules of natural justice. He asked the Tribunal to reinstate him without any loss of benefits.

DELIBERATIONS AND FINDINGS:

14. The Tribunal gave careful consideration to the evidence presented. It should be noted that the Company did not present a case and as such, the argument put forward in its Brief could not be substantiated.
15. The letter of termination stated that Mr. Ian Murray was terminated on the grounds of insubordination and that he made threatening remarks to the Director of the Company. This allegation could not be substantiated as the Company did not present a case.
16. Mr. Murray posited that he had no altercations with the Gafoors. He had never been written to, or disciplined in his fifteen (15) years of working with the Gafoors. Initially Mr. Murray was employed to another Company operated by the Gafoors and when that Company was closed he was re-employed in 2010 to work with them at Crowne Industries Limited.
17. The Tribunal agrees with Mr. Murray that the incidents with his mother had nothing to do with his job. Mr. Murray when asked the following questions by the panel, had this to say:



“Q: So Mr. Roach is the other supervisor?”

A: Yeah.

Q: And he called you to take the phone?”

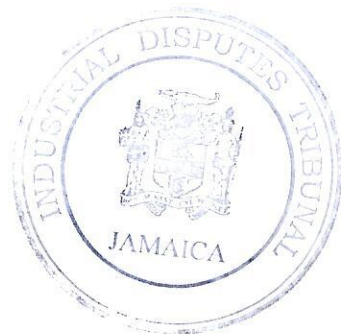
A: To tek di fone, yeah. Suh wen mi tek di fone from Missa Roach, Missa G tell me seh mi madda cum in deh cum gwaan bad. Suh mi sey, Ma’am, a nuh mi madda mi work wid, a nuh mi madda a pay mi. Missa G seh, “Missa Murray, yuh affi pay di price’, suh mi sey: “Wa kina prince mi haffi pay, a fyah you a guh fyah mi, an mi nuh duh nutt’n”

18. The Tribunal has concluded that Mr. Murray was terminated because of the incident between his mother and the Company.
19. The procedure that was adapted by the Company in terminating Mr. Murray was at variance with the Labour Relations Code as Mr. Murray was summarily dismissed without being called on, to answer any formal charges against him. The Tribunal is mandated to take into consideration Section 3(4) of the Labour Relations and Industrial Disputes Act, 1975, 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 in account by the Tribunal or Board in determining the question.”*

20. The Tribunal being a creature of statute finds that Section 22 of the Labour Relations Code (1976) was not observed.

“Disciplinary Procedure



(i) *Disciplinary Procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:*

- (a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;*
- (b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
- (c) give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
- (d) provide for a right of appeal, wherever practicable, to a level of management not previously involved;*
- (e) be simple and rapid in operation.*

(ii) *The disciplinary measures taken will depend on the nature of the misconduct but normally the procedure should operate as follows:*

- (a) the first step should be an oral warning, or in the case of more serious misconduct, a written warning setting out the circumstances;*
- (b) no worker should be dismissed for a first breach of discipline except in the case of gross misconduct;*
- (c) action on any further misconduct, for example, final warning, suspension without pay or dismissal, should be recorded in writing;*
- (d) details of any disciplinary action should be given in writing to the worker and to his representative;*
- (e) ...”*

21. None of the above provisions were afforded to Mr. Murray.



22. The Tribunal accepted the pay slips (Exhibit II, IIA and IIB) presented by Mr. Ian Murray verifying his weekly wages of Twelve Thousand Eight Hundred and Seventeen Dollars and Twenty Four Cents (\$12,817.24).


23. Given all the circumstances, the Tribunal finds that Mr. Ian Murray was unjustifiably terminated.


THE AWARD:


24. The Tribunal therefore awards that Mr. Ian Murray be compensated in the amount of Two Million Dollars (\$2,000,000.00) for his unjustifiable dismissal.

DATED THIS 28th DAY OF JUNE, 2023





.....
Mrs. Sharon Anderson
Chairman


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


.....
Dr. Denese Morrison, J.P.
Member

Witness:


.....
Royette Creary (Miss)
Secretary to the Division