

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 1/2014

SETTLEMENT OF DISPUTE

BETWEEN

FACTORIES CORPORATION OF JAMAICA

AND

CAROL CROOKS

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	CHAIRMAN
MR. LESLIE HALL	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

OCTOBER 21, 2016

IDT 1/2014

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**THE FACTORIES CORPORATION OF JAMAICA
(THE CORPORATION)**

AND

**CAROL CROOKS
(THE AGGRIEVED WORKER)**

REFERENCE:

By letter dated January 13, 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 Carol Crooks on the one hand and the Factories Corporation of Jamaica on the other hand over the termination of her 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. Charles Jones, C.D., J.P.	-	Chairman
Mr. Leslie Hall	-	Member, Section 8(2) (c) (ii)
Mr. Clinton Lewis	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Corporation** was represented by:

Ms. M. Angela Robertson	-	Attorney-at-Law
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In attendance was:

Mr. Desmond Sicard	-	Chief Strategic Officer
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The **Aggrieved Worker** was represented by:

Mr. Granville Valentine	-	Industrial Relations Consultant
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In attendance was:

Miss Carol Crooks	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made written and oral submissions during twenty-eight (28) sittings held between May 28, 2014 and July 20, 2016.

PARTIES TO DISPUTE:

The Factories Corporation of Jamaica (FCJ) (the Corporation) is the government agency that has primary responsibility for the development and management of industrial and commercial space

in the public sector. The Corporation is in the business of leasing and managing industrial, commercial and office space to investors.

Miss Carol Crooks was employed to the Factories Corporation of Jamaica in the capacity of Director of Finance.

BACKGROUND TO THE DISPUTE:

Miss Crooks was invited to the Corporation's Board Room in the afternoon of September 6, 2013, to meet with Mr. Desmond Sicard, the Acting Managing Director. When she arrived she observed that Mr. William Potopsingh, Director/Corporate Secretary and Chairman of the Human Resource Sub-Committee and Miss Enid Wells, Human Resource Manager, were also present. She was handed a letter by Miss Wells which spoke to the termination of her employment with immediate effect.

Miss Crooks engaged the services of Mr. Granville Valentine, Industrial Relations Consultant, to act on her behalf consequent on her dismissal. Mr. Valentine wrote to Mr. Sicard, citing wrongful and unfair dismissal. He also made an appeal for Miss Crooks' reinstatement to be effected by Friday, October 4, 2013. The Corporation did not comply.

The matter was then referred to the Ministry of Labour and Social Security for conciliation. Two conciliatory meetings were held but the parties failed to reach a settlement. Consequently, the Honourable Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal for settlement in accordance with Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act.

THE CORPORATION'S CASE:

Ms. Angela Robertson, Attorney-at-law, who represented the Corporation submitted that Miss Crooks' employment was terminated in accordance with the terms and conditions of her contract of employment. She, however, said that there were ongoing problems between Miss Crooks and the management which resulted in complaints and conflicts. She said that Miss Crooks was disobedient in carrying out lawful instructions and showed total disrespect to management. As a result her relationship with the Board of Directors had deteriorated. She stated that the issues that led to Miss Crooks' dismissal were:

1. Disobedience to lawful instructions, and
2. A breakdown in work relationships

The first witness called was Mr. Desmond Sicard – Chief Strategic Officer, who was acting as the Managing Director at the time of Miss Crooks' dismissal. Mr. Sicard in his evidence referred to the exchange of emails between himself and Miss Crooks on August 14 and 19, 2013 regarding the salary to be paid to Miss Sacha Desulme, the newly appointed Information Technology Manager. The recommendation was that Miss Desulme should be paid in the salary scale for posts classified at Grade 6, but Miss Crooks was insistent that she should be paid at Grade 5, the level to which the post was classified in a reclassification exercise. Mr. Sicard testified that the Board had not ratified the new classification structure and so the existing classification levels were still in operation.

Mr. Sicard testified that as a result of this disagreement a meeting was called on August 27, 2013 by Mr. Clive Fagan, Chairman of the Board of Directors. In attendance were himself and Mr. William Potopsingh, a Board Director. On entering the Chairman's office Miss Crooks enquired of the reason for Mr. Potopsingh's presence; and when asked for her response to the exchange of emails, she replied that she had already documented all she had to say on the matter. She was told that if that was her position she should leave the meeting, which she did.

Mr. Sicard further testified that some time after she left the room, it was brought to his attention that a decision was already taken by the Board to dismiss her as they had lost trust and confidence in her.

Mr. Sicard also testified that he received a memorandum from the Chairman of the Human Resource Committee advising that at the Board meetings of February 28, 2013 and June 6, 2013, the Board had decided to terminate Miss Crooks' appointment and instructed him to proceed with the termination. This he did effective September 6, 2013 by letter of same date.

By letter dated October 3, 2016 to Mr. Granville Valentine, the Corporation stated:

"The employment of Ms. Crooks was terminated on a no cause basis."

The Corporation then called Retired Major Franz D. Hall from the firm Security Advisory & Management Services Limited as its next witness. He testified that he was retained to verify whether Miss Crooks was employed to the firm, Alton Morgan & Company during the periods November to December 2013 and February 2, 2014 to June 30, 2015. He stated under cross-examination that he could not confirm whether she was gainfully employed or was engaged in voluntary work.

Mr. William Potopsingh was then called as a witness. In his evidence he stated that in 2012 he became a Director of the Board and that he was one of three Directors assigned special oversight duties. The two other Directors were Mr. Andral Shirley and Mr. Gary Scott. Mr Potopsingh

stated that he had oversight of human resource matters. He said that he was aware that at first the relationship between Mr. Shirley and Miss Crooks was cordial, but had quickly deteriorated; and that by early October 2012 Mr. Shirley was having issues of co-operation with Miss Crooks. Mr. Potopsingh stated that as Chairman Human Resource Committee he also had issues with Miss Crooks.

He highlighted correspondence between himself and Miss Crooks regarding the level of compensation to be paid to the newly appointed Information Technology Manager. He testified that in October 2012, Mr. Shirley had also experienced difficulties with Miss Crooks and had brought to attention that he was encountering indirect and passive resistance in the execution of his responsibilities. He identified a countermanding of his instructions by Miss Crooks in the matter of investment of funds and that he had submitted a memorandum to the Board outlining concerns regarding her which he said needed to be addressed.

The Corporation called no other witnesses.

In her closing remarks Mrs Robertson invited the Tribunal to consider the following which she described as conclusions of fact:

- a. *“Ms. Crooks reported directly to the managing director and had an obligation to implement policies of the Board;*
- b. *Ms. Crooks disobeyed lawful and reasonable orders and requests of Messrs. Shirley, Photopsingh, Sicard, and Ms. Wells.*
- c. *Ms. Crooks was disrespectful to the following members of the Board and management of the Company: Messrs. Shirley, Photopsingh, Sicard, Fagan and Ms. Wells.*
- d. *Ms. Crooks relationship with the managing director and members of the Board was characterized by repeated incidents of deliberate refusal to perform her job as Director of Finance;*
- e. *Ms. Crooks refusal to obey lawful and reasonable orders and the manner in which she did so resulted in a breakdown in the relationship between herself and the management of the Company;*
- f. *Ms. Crooks actions as Director of Finance were inconsistent with the best interests of the Company in investing monies in accounts that would yield the highest returns and spending on items that were the most affordable;*
- g. *Ms. Crooks leadership of the finance department created an uneasy environment for workers because she was biased to some employees and not motivating of others.*
- h. *In all instances where Ms. Crooks refused to obey the lawful and reasonable instructions of management she used the exchange of memos to state her views.*

Where a decision was taken for which Ms. Crooks did not agree but was in the remit of management she did not relent in her opposition;

- i. Ms. Crooks did not see herself as being accountable to anyone;*
- j. By failing to perform well and faithfully all the duties in the ordinary course of business as were assigned to her by authorized officers of the Company and to carry out its policies and instructions, Ms. Crooks was in breach of her contract of employment and her obligations under Paragraph 6 of the Labour Code."*

THE AGGRIEVED WORKER'S CASE:

Mr Granville Valentine, Industrial Relations Consultant who represented Miss Crooks, contended as follows:

- 1. "... Miss Carol Crooks' termination on a no cause basis is contrary to the FCJ's Human Resource Policy Manual – Terms of Appointment and Conditions of Service – Section A. Recruitment and Appointment. Subsection (4) Probation Period, d) which states that "During the period of probation either party may terminate employment at any time without notice or without cause being assigned" may have been misinterpreted.*
- 2. It is quite clear that Corporation failed to observe its disciplinary policy/rule established June 22, 2006 (which is still current) and Miss Crooks was not cited for any breach of discipline or was she told that her performance was below the required standards which would fall under the section misconduct or poor performance.*
- 3. No disciplinary hearing was conducted or any warning, verbal or written, issued to Miss Crooks for her to be given an opportunity to the right to appeal any decision taken by the Corporation.*
- 4. In addition, it is also very clear that due process was not followed and Miss Crooks was not given the right to be heard and the right to be represented as set out in the FCJ's Human Resource Disciplinary Policy Procedures, Staff Orders of 2004 and Labour Relations Code 1976 and the rule of Natural Justice.*
- 5. The FCJ management has breached the Memorandum of Understanding- March 2013 which was signed between the Unions and the Government of Jamaica (GOJ).....*
- 6. The issues which arose during August 8, 2012 and September 6, 2013 clearly demonstrate several differences in opinion between Miss Crooks, Management and the Board in respect of certain professional decisions which she highlighted or took in accordance with the financial regulations and instructions stipulated by the Ministry of Finance, Financial Administration and Audit Act (FAA) Act, Public [Bodies] Management and Accountability (PBMA) Act Government of Jamaica's Procurement Policy and the Staff Orders, 2004. This is therefore contrary to the law of Natural justice*

and the Labour Relation Code, 1976 under section 22 – Page 26 – Disciplinary Procedure.

7. *We also contend that the current Board did not seek to settle the long standing disputes which had existed under the previous board and it was evident that Miss Crooks was not properly reinstated. It is quite obvious that the oversight team which consisted of three directors had overreached themselves and they were interfering with the administrative aspects of the Corporation instead of ensuring that the policies as stipulated by Board were carried out by Management. It is also clear that these three directors were responsible for the ongoing conflict and tension and they were not interested in adhering to the financial regulations and instructions as stipulation in the circulars from the Ministry of Finance, FAA ACT, PBMA ACT, Procurement Procedures and Staff Orders of 2004."*

He further contended that her dismissal was done out of malice.

He called Miss Carol Crooks, the Aggrieved, as his only witness.

Miss Crooks in her testimony spoke of the very excellent working relationship she had had with Mr. Sicard. She testified that she was never given a letter indicating any disciplinary charge, nor had she committed any breach. She had never been invited to a hearing and had not been advised verbally or in writing of any weak areas in her performance. She also stated that she had no problem with Miss Wells or Mr. Fagan. She said that she was the accountable officer and had to be guided by the Financial Administration & Audit Act, the National Contracts Commission, the Tax Compliance Certificate and the requirements of the Government of Jamaica Procurement Policy.

In her testimony she said that her life was no longer normal as her dismissal had affected her credit worthiness. She stated that she had tried to obtain gainful employment but was unsuccessful. However, under cross examination when asked about her relationship with the firm of Alton Morgan & Company, she stated that she only received a stipend.

Miss Crooks testified that on August 28, 2013 she was invited to a meeting by Mr. Fagan, Chairman of the Board. She said she was told that he had received audited financial statements and would like to discuss them with her. On entering the room she saw, in addition to Mr. Fagan, Mr. Potopsingh and Mr Sicard and she was told that an explanation was required regarding the payment to Miss Desulme. She testified that the Chairman gave her time to prepare a report and also permission to leave the meeting.

[Mr. Sicard's earlier testimony was that the meeting was on August 27, 2013.]

She said that there were no further meetings but that on Friday, September 6, 2013 Mr. Sicard called and invited her to meet with him in the Board Room. On entering she saw that Mr. Potopsingh and Miss Wells were there also and she was handed a letter by Miss Wells which turned out to be a letter of termination.

No other witnesses were called.

Mr. Valentine in his closing address maintained that there was no indication that Miss Crooks was dismissed for cause and that there was no evidence written or verbal to state that she was uncooperative. He submitted that Miss Crooks followed the procedures, policies and laws that guided the accounting system. He said that no breach was identified by the Corporation either in writing or verbally and that Mr. Sicard had never said that the Corporation had lost confidence in Miss Crooks. He stated also that her professionalism, integrity and judgement were never questioned.

Mr. Valentine further submitted that the problems started after August 7, 2012 when the Board of Directors established an oversight committee. Consequently, Miss Crooks highlighted various breaches by the oversight committee members and that the FCJ's Human Resource Policy was breached in the recruitment and employment process.

He concluded that the Corporation had failed to follow its disciplinary policy. He repeated that Miss Crooks was not cited for any breach of discipline and that there was no disciplinary hearing and due process was not followed.

TRIBUNAL'S DELIBERATION:

The Tribunal first of all noted the following sequence of events:

- | | | |
|------------------|---|--|
| December 1, 2005 | - | Miss Crooks appointed Financial Controller Post was made redundant on November 26, 2010 in a restructuring exercise. Miss Crooks was dismissed with effect from that date on the grounds of redundancy |
| August 7, 2012 | - | Board Directors Messrs. Andral Shirley, William Potopsingh and Gary Scott, assigned oversight duties with respect to management functions |

- August 8, 2012 - Miss Crooks assumed duties in the new post of Director of Finance, following the approval given by the Ministry of Finance for her reinstatement with effect from November 26, 2010
- October 2012 - Reported dispute between Miss Crooks and Mr. Shirley, Chairman of the Finance Committee, regarding the investment of surplus funds
- February 2013 - Reported dispute concerning employment of Miss Sasha Nelson as Accounting Clerk
- August 2013 - Reported dispute regarding compensation to be paid to Miss Sacha Desulme, Information Technology Manager
- August 27, 2013 - Miss Crooks called to a meeting by the Chairman at which Messrs. Potopsingh and Sicard were present
- September 6, 2013 - Miss Crooks handed letter terminating her services

The Tribunal noted that Miss Crooks' appointment was terminated by the Corporation on a no cause basis in keeping with the terms of paragraph 5 of her letter of employment dated November 2, 2005, which provides:

"After the probationary period your employment may be terminated as follows:

- a) By three (3) months' notice on either side. The company may however, elect to pay you three (3) month's salary in lieu of notice;"*

The Corporation also submitted that Miss Crooks' termination of employment was in line with the advice obtained from the Ministry of Finance and Planning in a letter dated April 29, 2013 which read in part:

"This serves to confirm that where termination clauses exist in contracts/letters of employment, the correct procedure is to follow the terms of termination as expressed in the termination clause."

Members recalled that Mr. Sicard in his testimony said that he had received a memorandum dated September 6, 2013 from the Chairman of the Human Resource Committee authorising the termination of Miss Crooks' appointment in keeping with the decision of the Board at the meetings of February 28, 2013 and June 6, 2013.

It did not escape the attention of the Tribunal that reported incidents in which Miss Crooks was deemed to be insubordinate involved Messrs. Potopsingh and Shirley – members of the Board of Directors who had been given oversight of management functions. The Tribunal was not clear as to whether Miss Crooks was required to report to these gentlemen in addition to her direct reporting to the Managing Director. The Tribunal noted that no attempts were made to take disciplinary action against her.

The Tribunal also noted that no reason was given for Miss Crooks' dismissal in her letter of termination and examined carefully an extract of the minutes of Board Meeting of September 26, 2013, which read:

“Director Potopsingh reported that the Board had decided that the former Director of Finance’s [DOF] contract would be terminated on a ‘no cause’ basis.....”

“She [Miss Crooks] was advised that based on her conduct, the Board had lost trust and confidence in her and had taken a decision to terminate her employment on the basis of ‘no cause’ and pursuant to the relevant clause in her Letter of Employment,”

The minutes further indicated that this raised a question in Director Shirley's mind –

“.... if the former DOF was terminated without cause, her conduct cannot be given as a reason for her dismissal. A discussion ensued as to whether loss of trust and confidence was not cause. Director Potopsingh advised that dismissal for cause speaks to neglect of duty, misconduct, insubordination, dishonesty, those are cause and if it is not falling in one of those, it is without cause. He added that the decision was taken by the Board that she should be terminated without cause and it is also in direct compliance with the advice given by the Ministry of Finance.”

The Tribunal noted Mr. Potopsingh's explanation of "cause" which he said was neglect of duties, misconduct, insubordination and dishonesty. The Tribunal could not help but ask itself, if Miss Crooks' performance was not in breach of any of the stated reasons for "cause", then, what was it that had led to loss of trust and confidence in her?

The following exchange between Mr. Potopsingh and Mr. Valentine during cross examination regarding the meeting of August 27, 2013 was considered.

"Q So, Mr Potopsingh, you are not putting any label, you say, on the meeting; that meeting that you speak of, so you are dis-agreeing with me that it was a disciplinary meeting, are you?"

A I have not agreed or disagreed.

Q You have not agreed or disagreed. And the meeting, you said, the purpose of the meeting was for Miss Crooks to explain herself, and I correct – am I correct, sir?"

A Mr. Valentine, I have answered the question already.

Chairman: Just answer it again Mr. Potopsingh, it is easier that way.

A It was called for her to explain and for her to put the position why she took the stand that she took.

Q And out of that very meeting a decision was taken to dismiss her?

A I gave evidence earlier that out of that meeting the realization was there that Miss Crooks was no longer answerable or accountable to anybody in the Company, not the Chairman, not the Board, not the M.D., no one.

Q So the decision was taken from that meeting to dismiss her?

A The decision was taken after that Meeting, I believe.

Q You had Board Meeting after that meeting?

A I don't recall.

Q So the decision to dismiss her was not taken at a Board Meeting?

A I didn't say that.

Q No, I am asking, was it taken at a Board Meeting?"

- A The Board decided to dismiss her, I am not sure of the date or the meeting place, but I know that the Board took that decision.*
- Q Who accused Miss Crooks of these actions or complaints, who were the accusers?*
- A What do you mean by "accusers"?*
- Q The persons who indicated that she did something wrong, who were they?*
- A That's a strange question, Mr. Valentine. The circumstances are well laid out here, that she refused to follow instructions; the Chairman was aware of it and called the meeting to hear her, and I don't know that there were any accusers.*
- Q So nobody accused her of any breach or doing anything wrong, nobody?*
- A You see, we weren't trying her."*

The Tribunal further noted that the already mentioned disputes between Miss Crooks and Board members would suggest grounds for disciplinary action, but the Corporation took no disciplinary action against her. The only semblance of any sanction was in the memorandum to Miss Crooks from Mr. Potopsingh dated February 14, 2013, which stated in the final paragraph –

"Your lack of cooperation and obstruction is noted and you are to consider this as a warning for possible further action."

This, however, was in relation to the assignment of Miss Sasha Nelson and was a warning for possible further action. The Tribunal could only conjecture as to what was meant by "possible further action". This would suggest that cause was cited.

The Tribunal in its discourse agreed that, the crux of this matter is whether proper procedure was followed in terminating the employment of Miss Crooks.

In examining the Corporation's position that it acted in accordance with the terms and conditions of Miss Crooks' employment and the advice from the Ministry of Finance and Planning, it was evident that the Corporation paid no attention to the provisions of the Labour Relations Code and did not consider the application of the Rules of Natural Justice. It was the considered opinion of the Tribunal that the termination clause in Miss Crooks' letter of appointment did not negate these considerations.

The Tribunal noted that Miss Crooks was dismissed on a no cause basis because the Corporation submitted that they had lost confidence in her, and also, that the manner in which she was dismissed was inconsistent with the clear-cut directives and guidelines of the Labour Relations and Industrial Disputes Act and the Labour Relations Code.

On the basis of the evidence provided, the Tribunal concluded that although the dismissal took effect on September 6, 2013, the first decision of the Board to dismiss her was taken from as early as February 2013, which begs the question that if there was a loss of confidence in her which merited dismissal, why was there a delay in effecting her dismissal?

The Tribunal noted that submissions made on behalf of the Corporation stated that Miss Crooks disobeyed lawful and reasonable orders, was disrespectful and refused to perform her job as Director of Finance and that her actions as Director of Finance were inconsistent with the best interest of the Corporation.

It appears, therefore, that the Corporation had cause to institute disciplinary proceedings against Miss Crooks, which they did not. The Tribunal finds it appropriate to refer to the Labour Relations Code under the rubric, "Disciplinary Procedure" which states in Section 22(c) that the procedure should give the worker the opportunity to state his case and the right to be accompanied by his representative.

FINDINGS:

The Tribunal after deliberations agreed that the manner in which Miss Carol Crooks' employment was terminated was unacceptable and unjustifiable.

AWARD:

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

- (a) The Corporation reinstates Miss Carol Crooks on or before November 10, 2016 with payment of all emoluments from the date of termination to the date of reinstatement;

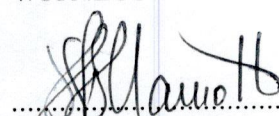
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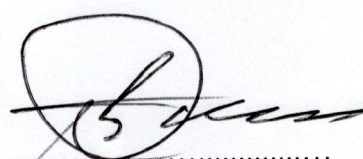
- (b) Failure to reinstate Miss Crooks as stipulated in (a) above, the Corporation shall pay to her, compensation in the amount equivalent to thirty (30) months' basic salary at the rate payable at the time of her dismissal, as relief.

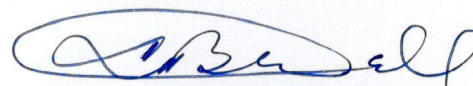
DATED THIS 21ST DAY OF OCTOBER 2016.



WITNESS:


.....
Nicola Smith Marriott (Mrs.)
Secretary to the Division


.....
Mr. Charles Jones, C.D, J.P.
Chairman


.....
Mr. Leslie Hall
Member


.....
Mr. Clinton Lewis
Member