

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: 40/2022

SETTLEMENT OF DISPUTE

BETWEEN

INDIES PHARMA JAMAICA LIMITED

AND

PATRICK ALLEN

AND THE

AWARD



I.D.T. DIVISION

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

NOVEMBER 24, 2023

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

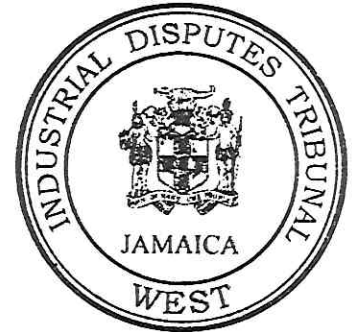
IN RESPECT OF AN INDUSTRIAL DISPUTE

BETWEEN

**INDIES PHARMA JAMAICA LIMITED
(THE COMPANY)**

AND

**PATRICK ALLEN
(THE AGGRIEVED WORKER)**



REFERENCE:

By letter dated October 13, 2022 the Honourable Minister of Labour and Social Security pursuant to Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute describe therein:-

The Terms of Reference were as follows:

“To determine and settle the dispute between Indies Pharma Jamaica Limited on the one hand, and Patrick Allen 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:

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

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Ms. Taniesha McIntosh	-	Attorney-at-Law
Mr. Carlton Gordon	-	Business Industrial Relations Consultant

The **Aggrieved Worker** was represented by:

Mr. Alexander Nicholson	-	Industrial Relations Consultant
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In attendance:

Mr. Patrick Allen	-	Aggrieved Worker
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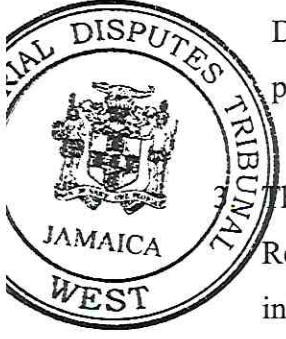
SUBMISSIONS AND SITTINGS

Briefs were submitted by both parties who made written and oral submissions during six (6) sittings from March 21, 2023, and August 14, 2023.



BACKGROUND TO THE DISPUTE:

1. Indies Pharma Jamaica Limited, *hereinafter referred to as "the Company"*, is a limited liability company duly incorporated under the laws of Jamaica which operates as a pharmaceutical organization. The Company started its activities as a vertically integrated company offering consulting, regulatory & intellectual property services in addition to marketing and distribution services to its overseas pharmaceutical manufacturers.
2. Mr. Patrick Allen, *hereinafter referred to as "the Aggrieved Worker"*, was employed to the Company as a Driver in March 2015. By letter dated November 24, 2020, the Aggrieved Worker was invited to a disciplinary hearing which was held on November 26, 2020. On December 8, 2020, the Aggrieved Worker returned the Company's property previously provided to him.



The Aggrieved Worker engaged the services of Mr. Alexander Nicholson, Industrial Relations Consultant, who contested his termination and sought the assistance and intervention of the Ministry of Labour and Social Security. No resolution was reached, and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S 'S CASE

4. In presenting its case, the Company through its representative, Ms. Taniesha McIntosh, called two (2) witnesses. The first witness was Mr. Ricardo Stephenson, Chief Accountant, who testified that he has been with the Company from 2008 to present in that capacity. He gave evidence that as Chief Accountant he reported to the CEO of the Company. Mr. Stephenson stated that he has full responsibility for the Accounts Department, supervises and interacts directly with field staff and internal staff. He explained that field staff consisted of the sales representatives, medical representatives and the drivers while internal staff consisted of mainly customer service, accounting staff, packing and warehousing staff.
5. He stated that the Company had 13-14 drivers in its employ. He explained that there were times when two (2) drivers would be scheduled together. In that case one would be

considered the driver and the other considered the assistant driver. If there was an assistant driver, that person would interact with the customer, deliver the products and collect the cash. The driver would remain in the vehicle. If there wasn't an assistant driver, the driver would perform both roles of driving as well as delivering the products and collecting payment. It is his evidence that all were hired as drivers but may perform the duties of a driver or assistant driver based on the schedule. He testified that because each driver and assistant driver would interact with customers at some point, they were each given a receipt book to record when monies were collected on behalf of the Company.

6. Mr. Stephenson indicated that he knew the Aggrieved Worker as one of the Company's drivers. He gave evidence that the drivers didn't report to him directly but he was a Senior Manager so the drivers, to a certain extent, reported to him. It is his evidence that all new drivers were vetted by their immediate supervisor, the Logistics Manager and the Chief Pharmacist. He testified that all drivers were given a Company vehicle, receipt book and safe in the vehicle. He stated that all new employees were given the Employee Handbook which they were required to read and sign. He gave evidence that the employees kept the handbook until they separated from the Company.
7. He also gave evidence that he was aware that the Aggrieved Worker was involved in a dispute in relation to the discrepancy of monies that were not paid over to the Accounts Department. He stated that the issues arose from the Accounts Department who brought the issue to his attention. Mr. Stephenson explained that the receivables department entrusted personnel in the office to liaise with customers pertaining to goods received and monitored payments. It is his evidence that the team brought to his attention that there were outstanding monies from some customers. When the Company contacted the customers, they (the customers) indicated that the payments were already made but the said monies were not handed over to the Company.
8. Mr. Stephenson testified that from memory the Company was first made aware of the discrepancy in or around October 2020- November 2020. He gave evidence that as Chief



Accountant he played an intricate role in the investigation of the above-mentioned issues as he had to give an account of the missing funds.

9. Mr. Stephenson explained the investigation in detail where the Company checked the internal support documents such as the driver's delivery sheet which indicated all the goods that went out for delivery on a particular day and which driver delivered the goods as well as the location. It is his evidence that the Company also looked at the driver's schedule. He testified that the driver's schedule detailed the parish each driver went on a weekly basis. He gave evidence that from driver's delivery sheet and schedule, the Company was able to ascertain which driver or assistant driver went to a particular location based on the parish assigned and what products were delivered.
10. He stated that the Company requested customers to provide documentation in order to verify that payments were made as well as to verify who signed for the payment. He described how embarrassing it was for the Company to be requesting such information from its clients. He gave evidence that from the documents submitted by some customers, it showed some discrepancies.
11. It is his evidence that upon reviewing a customer's copy of a paid invoice dated July 24, 2020, the Company noticed that the invoice was signed by both the customer and driver to indicate that monies were collected in cash. He testified that he noticed the name of the driver on the said paid invoice was **D. Gary**. He indicated that the Company did not have in its employ a driver with that name and that was what prompted the Company to do further investigations. He gave evidence that he then checked the driver's schedule in order to check which driver was assigned to that parish on that particular day. From the schedule, the driver assigned was the Aggrieved Worker.
12. Mr. Stephenson stated that in another instance, a customer based in Clarendon submitted an invoice dated September 2, 2020 which showed that the goods were delivered, customer paid cash and the said cash was collected by **D. Gray** on September 4, 2020. It is his evidence that the Company had in its employ a driver with that name. It is also his evidence



that checks were made to ascertain if Mr. D. Gray in its employment was on that route on that particular day. He indicated that he spoke with Mr. Gray who informed him that he was not on that route on the date in question. In addition, the payment was not reflected in his receipt book. He testified that the Company, then, checked the drivers' schedule and the delivery log sheet which showed that it was the Aggrieved Worker who was assigned to the parish that the customer was based.

13. He gave evidence of a 3rd instance where the collections department contacted a customer about their outstanding payment. He stated that the customer informed the Company that payment was made on August 19, 2020 and documents sent to verify such. It is his evidence that the Company checked the drivers' log sheet which showed that the Aggrieved Worker switched route with another driver, Mr. Gaynor, on that day. He testified that both drivers admitted to the switch. He explained that the Company had to check the driver's receipt book to verify who collected the monies. He gave evidence that upon checking the Aggrieved Worker's receipt book, the Aggrieved Worker signed it on August 19, 2020 as Mr. Gaynor.
14. It is his evidence that from the investigation, the misappropriation of funds popped out at him which was not new. He continued by stating that what was new was forging the signature of other drivers who were not involved in the matter. He explained that after gathering all of the evidence, the procedure would be that the driver would be taken off the road in an effort to desist further communication with the Company's customers and to prevent the driver in question from collecting monies on behalf of the Company.
15. He gave evidence that he called the Aggrieved Worker to a meeting to hear his side of what may have caused the issue. He stated that the meeting was mainly regarding cash discrepancy and forgery of receipts based on the Company's internal investigation. He also stated that the Aggrieved Worker was asked why the monies were not handed over to the Company and why were the name and signature of the invoices different from his name. He stated that he can't recall if the Aggrieved Worker was given a copy of the documents generated from the investigation in the meeting. It is his evidence that other persons were



present in the meeting being either the CEO or the Aggrieved Worker's direct supervisor. He testified that the Aggrieved Worker didn't have a representative at the meeting because it was not required.

16. He gave evidence that he can't recall what happened immediately after the meeting. He wasn't sure if the Aggrieved Worker was told to return to work but he indicated that the usual practice was that the Company would not allow further interaction with the customers and the Aggrieved Worker placed in the office to work or immediately sent on suspension. He later stated that the Aggrieved Worker was placed on suspension without pay pending investigation for three (3) days in an effort to prevent the Aggrieved Worker from interacting with customers during the investigation. It is his evidence that the Aggrieved Worker was not charged at the time of his suspension pending investigation nor was he invited to a disciplinary hearing prior to being placed on suspension pending investigation.

17. He testified that the Aggrieved Worker's suspension was extended because the Company faced some difficulty gathering the information due to the copies of the receipts which should have been retained by the Company from the Aggrieved Worker's receipt book were torn out. He also testified that as a result the Company had to contact customers to share their copies of the receipts which delayed the investigation. He re-iterated that the suspension pending investigation was not intended to punish the Aggrieved Worker.

18. He gave evidence that he was the one who charged the Aggrieved Worker and invited him to a disciplinary hearing. He noted that the Aggrieved Worker was also informed of his right to representation and given all the evidence before the disciplinary hearing. He stated that the disciplinary hearing was held and the Aggrieved Worker did not return to work after the disciplinary hearing ended as he (the Aggrieved Worker) opted to resign and to reimburse the Company.

19. It is his evidence that the Aggrieved Worker returned all the necessities provided to him by the Company for him to perform his duties such as cell phone and work shirt. He testified that the Company saw that as an indication that he would not return to work. He gave

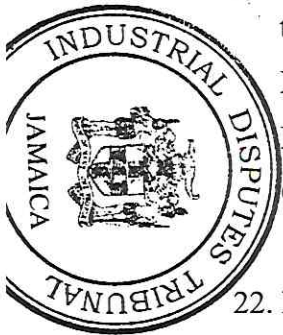


evidence that the Company might have made efforts to contact the Aggrieved Worker requesting him to send his official resignation but such communication fell through. He stated that the Aggrieved Worker was not dismissed by the Company and there isn't any record of such termination nor a termination letter.

20. He gave evidence that the monies withheld during the suspension pending investigation and all monies owed to the Aggrieved Worker up to his last day of work were calculated and the misappropriated monies were deducted. He stated that after the deduction, the Aggrieved Worker had monies due to him. It is his evidence that the Company was waiting for the Aggrieved Worker to provide the official resignation letter in order to prepare the cheque but all other documentation which outlined his payment and a section for him to sign that he received the cheque was completed. He testified that if the Aggrieved Worker had returned to the Company with the resignation letter, the Company would have written the cheque and handed it to him. He gave evidence that additional invoices were found where monies were collected by the Aggrieved Worker and not handed over to the Company.

21. The Company's second witness was Mr. Dalton Taylor, who testified that he is currently the Property Manager at Hanulu GPM Holding. He gave evidence that Hanulu GPM Holding was part of the Bioprist Group of Companies of which the Company is a part of. He stated that he was asked by Ms. Hutchinson, former Human Resource Manager of the Company, to chair a disciplinary hearing in May 2020 concerning the Aggrieved Worker.

22. It is his evidence that present in the meeting were himself, the Aggrieved Worker and Ms. Gayle who recorded the hearing. He testified that he was verbally briefed on the matter prior to the disciplinary hearing. He gave evidence that the Aggrieved Worker was asked prior to his (Mr. Taylor) arrival at the disciplinary hearing whether he needed a representative and the Aggrieved Worker responded that he didn't. He gave evidence that when he arrived at the hearing he asked the Aggrieved Worker if someone else was coming and the Aggrieved Worker responded that there was no-one else.



23. He stated that he started the hearing by stating the charges that were laid against the Aggrieved Worker which were misappropriation of funds and forgery. He went through the documentary evidence provided by the Company. The Aggrieved Worker was given an opportunity to respond to each document where he stated in one instance that the customer had issues in the past. When shown other documents where the name on the receipt was **D. Gray**, it is his evidence that the Aggrieved Worker stated that it had nothing to do with him.

24. He testified that he continued to show the Aggrieved Worker the evidence from the Company. When he showed the Aggrieved Worker the evidence on the day when he switched route with another driver, he gave evidence that the Aggrieved Worker indicated that he made a mistake. Mr. Taylor went on to testify that when he asked the Aggrieved Worker about signing the receipt book as someone else, the Aggrieved Worker said it was also a mistake. He stated that the Aggrieved Worker explained that after collecting the cash, he (the Aggrieved Worker) left the cash in the van overnight. The next morning he (the Aggrieved Worker) took it from the van and brought it to the Accounts Department and that was when the Accounts Department found out that the funds were short. Mr. Taylor then recalled that he informed the Aggrieved Worker that signing someone else's name was forgery to which the Aggrieved Worker didn't respond.

25. It is his evidence that he didn't go through the other evidence as the Aggrieved Worker told him in the meeting that his mother advised him to repay the money and to continue with his life. He testified that he informed the Aggrieved Worker of the implications if he decides to pay back the money which were that he (the Aggrieved Worker) would resign and the circumstances of the resignation would not reflect on his file. He gave evidence that the Aggrieved Worker paused for a few times before informing him (Mr. Taylor) that he would do as his mother suggested to return the monies amounting to \$44,500.00 and resign. Mr. Taylor stated that at no point in time did he persuade or ask the Aggrieved Worker to resign. It is his evidence that the hearing ended on that note and the Aggrieved Worker was informed that he would get a copy of the minutes of the hearing and he could resign in the usual manner.



26. He testified that he made a report to Ms. Hutchinson which outlined what was agreed to in the hearing. He also testified that he became aware that the Aggrieved Worker did not do as he had agreed to.

THE COMPANY'S CONTENTIONS

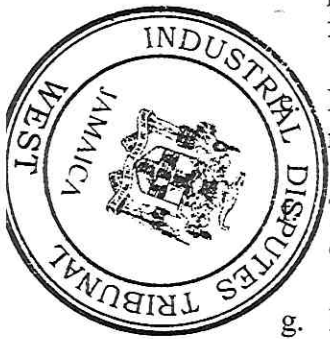
The Company contends that:

- a. The Aggrieved Worker breached the Labour Relations Code by his failure to perform his duties and obligations to the Company;
- b. In accordance with the Labour Relations Code, the Aggrieved Worker was informed of the charges laid against him in writing;
- c. The Aggrieved Worker failed to provide evidence to refute such charges;
- d. Due process was followed as the Aggrieved Worker was afforded a disciplinary hearing to state his case and informed of his right to representation of his choice. As such, the principles of natural justice as well as the strict tenets of procedural fairness were followed;

During the disciplinary hearing, the Aggrieved Worker made the decision to resign and reimburse all outstanding monies to the Company;

The Aggrieved Worker resigned from his job and/or failed to report to work after the disciplinary hearing;

- g. If it is accepted that the Aggrieved Worker did not resign, the Aggrieved Worker failed to provide any explanation to the Company for his continued absence;
- h. When the Aggrieved Worker was placed on suspension, it was not with the intention to punish him but to facilitate investigations. All monies due to him during that period were calculated at the end of the disciplinary hearing;
- i. The Aggrieved Worker is not currently on suspension as the period ended on November 25, 2020. His continued absence from work was by reason of his actions and inactions; and
- j. The Aggrieved Worker was not terminated by the Company and he failed to prove such.

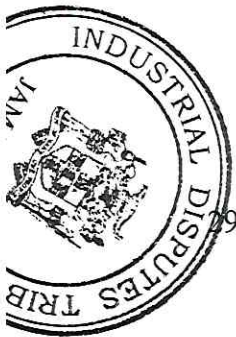


THE AGGRIEVED WORKER'S CASE

27. The Aggrieved Worker testified in examination-in-chief that he was employed as a Delivery Driver at the Company for approximately six (6) years and he reported to Mr. Brown, his supervisor. He gave evidence that his duties consisted of organizing invoices and driving. He stated that he worked with a sideman who performed the rest of the duties. He explained that in organizing the invoices, he planned the route of the trips and gave it to the sideman. The sideman would then write them down in order on the delivery sheet. It is his evidence that as a driver he never collected cash from a customer and never interacted with them. He testified that it was the sideman's duty to go into the pharmacy, interact with the customers and collect the cash as he couldn't leave the bus unattended. He later testified that the Company issued a receipt book to him and that he collected monies when he worked as the sideman but that rarely occurred.

28. He gave evidence that on days where there was a driver and no sideman, there would be no deliveries on that day or the Company would assign someone to be the sideman. When asked about the incident concerning **D. Gary**, he didn't respond. When asked about the incident concerning **D. Gray**, it is his evidence that D. Gray worked at the Company as a sideman.

29. He testified that on November 16, 2020 he received a call from Mr. Stephenson, the Chief Accountant that Mr. Stephenson wanted to have a meeting with him in his office. He gave evidence that he attended the said meeting and that it was only Mr. Stephenson and himself that were present. He stated that Mr. Stephenson started the meeting by telling him of a matter which was on-going for a while and that the Company needed to put a stop to it. It is his evidence that Mr. Stephenson then told him that monies were missing and his (Aggrieved Worker's) name was mentioned. It is also his evidence that he was told by Mr. Stephenson that if he were to repay the monies, the matter would end there. In response, Mr. Allen indicated that he knew nothing of the missing monies and Mr. Stephenson told him that he would be placed on suspension for three days.

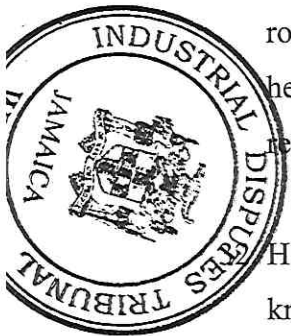


30. He testified that he was placed on three (3) days suspension. He gave evidence that he was initially informed of his suspension verbally and he later received a letter. He stated that he received another letter which served to inform him that his suspension was extended as the Company needed more time to carry out its investigation. It is his evidence that he was not charged with regards to the suspension nor did he attend a disciplinary hearing prior to being suspended. He testified that the investigation conducted was not properly done. He continued to state that if it was properly done, it would have shown that he didn't go into the pharmacy.

31. He gave evidence that he was invited to attend a disciplinary hearing by letter dated November 24, 2020. He stated that the said letter informed him that he had the right to representation in the hearing. It is his evidence that he contacted someone to represent him but found out on the day of the hearing that the person represented the Company in matters such as his. He explained that because he was already at the hearing room, he entered the room. He testified that he was asked if he had a representative and he informed them that he didn't. He then gave evidence that he did not know that he should have had a representative during the hearing.

He stated that in the hearing he was asked of the missing monies and he explained that he knew nothing of it. It is Mr. Allen's evidence that he was told to resign in order to keep his record clean. He testified that Mr. Taylor continued to pressure him to resign while he (Mr. Taylor) showed him the delivery sheet and pointed out that he (the Aggrieved Worker) worked on the days and routes in question. He gave evidence that he maintained that he didn't know about it and had nothing to do with the missing monies. Mr. Allen later gave evidence that the Company gave him the opportunity to resign.

33. Mr. Allen stated that he informed Mr. Taylor that he would think about resigning and that if the Company had so much evidence against him they should terminate him. He testified that at the end of the hearing he was told that the Company would contact him. He gave evidence that when he left the hearing room, Ms. Hutchinson asked him to return his uniform, phone and handbook. However, he later gave evidence that he can't recall if Ms.



Hutchinson told him to return the Company items, but he recalled that he returned the items. He stated that he waited for approximately two (2) weeks for the Company to contact him which it didn't. It is his evidence that he contacted a representative who contacted the Company to request the minutes from the hearing. He explained that the Company didn't provide the minutes and a meeting was scheduled instead. He indicated that the meeting was held with the Company, its representative, himself and his representative. He testified that in the said meeting he asked the Company for a separation letter and the Company informed him that it was unable to provide such.

34. He gave evidence that he didn't return to work after the hearing as firstly, he was still on suspension, secondly, he returned his uniform and thirdly, the Company didn't contact him. He stated that when his initial suspension period was extended, a specified period for the extension was not established. It is his evidence that he can't recall if he or his representative requested for him to return to work but he recalled that his representative asked about his employment status after the disciplinary hearing by way of a letter which he delivered to the Company. He gave evidence that he can't recall if he was terminated by the Company but later on in his evidence stated that he was not terminated by the Company and that he didn't receive any letter that his contract was terminated.

35. It is his evidence that he is not currently working and he didn't make any attempts to seek alternative employment because he is of the view that he is still on suspension.

THE AGGRIEVED WORKER'S CONTENTIONS

The Aggrieved Worker contends that:

- a. He was in relation to the suspension:
 - not charged,
 - not informed of his right to representation prior to his suspension,
 - no disciplinary hearing held and
 - not given the opportunity to appeal the Company's decision to suspend him where there were flagrant breaches of the LRIDA and the principles of natural justice;
- b. Mr. Stephenson played several roles leading up to and during the disciplinary process;



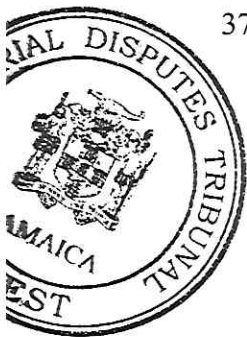
- c. The Company proceeded to hold a disciplinary hearing without him having a representative;
- d. A disciplinary hearing held after he was suspended is a violation of the Labour Relations Code;
- e. He did not resign from his job and the Company failed to provide evidence to prove such;
- f. He was unfairly terminated after refusing to tender a letter of resignation;
- g. The above-mentioned breaches by the Company run counter to standard industrial relations practices, contravenes the LRIDA and the Labour Relations Code and are not in keeping with the rules of natural justice;
- h. It was asked of the Tribunal to reflect on the leading English case on impartiality *R v Sussex Justices, ex parte McCarthy* which is famous for bringing into common parlance the oft-quoted aphorism “*not only must justice be done; it must also be seen to be done.*” in considering any remedy; and
- i. That the Tribunal finds that he was unjustifiably dismissed and should be awarded compensation in the form of salary, including commission from the time of separation to the end of this case.

THE TRIBUNAL’S RESPONSE AND FINDINGS

36. The Tribunal, after careful examination of the evidence adduced by both parties to the dispute, must determine whether the Company was justified in the termination of the Aggrieved Worker’s employment.

37. The Tribunal accepts the evidence from both parties that Mr. Allen was employed in the position of a Driver but does not accept his evidence that as a driver he only organized the invoices and remained in the vehicle. The Tribunal accepts the Company’s evidence that both drivers and assistant drivers (otherwise called sidemen) were employed in the position of Drivers but they may perform the duties of the driver or assistant driver based on the schedule.

38. The Company adduced evidence that on particular days monies were collected by a driver or assistant driver from the customers which were not handed over to the Company. The Tribunal accepts the Company’s evidence that both drivers and assistant drivers received a



receipt book to document instances when customers paid by cash. The Tribunal notes that the Company used internal documents such as the driver's delivery log sheet, driver's delivery schedule, driver's receipt books and the customers' copies of invoices to ascertain who was scheduled for the days in question. The Tribunal accepts that based on the evidence provided the Aggrieved Worker was scheduled on those days.

39. On July 23, 2020, the customer's invoice showed that a **D. Gary** collected monies on behalf of the Company. It was submitted by the Company that it did not have in its employ an employee with said name. The Tribunal accepts the Company's evidence that based on the driver's delivery sheet and schedule the Aggrieved Worker was scheduled for the parish in which the customer was located. Approximately two (2) months later, September 4, 2020, another customer invoice was inspected where it showed the name of the driver who collected monies on behalf of the Company as **D. Gray**. It is the Company's evidence that the Company has in its employment a driver with said name but he was not scheduled for that parish. It is also the Company evidence that from checking the driver's schedule and receipt books, the Aggrieved Worker was scheduled for the parish where the customer was located.



40. The Tribunal does not accept the Aggrieved Worker's evidence that instances where an assistant driver was not assigned to him that there would be no deliveries on that day or an assistant driver would be assigned to him. This was evident from the abovementioned delivery made on July 23, 2020 where he delivered goods without an assistant driver assigned and no evidence was provided by the Aggrieved Worker to prove otherwise. The Tribunal also notes another instance in which the Aggrieved Worker switched routes with another driver where he delivered the goods, collected the monies on behalf of the Company and signed as the driver he switched route with.

41. After considering all of the evidence, the Tribunal is of the view that the Company may have had cogent reasons to terminate the Aggrieved Worker. The Tribunal also finds the Aggrieved Worker was not a credible witness as he was vague in his responses and provided

contradictory statements throughout his evidence concerning his duties and what transpired up to his separation from the Company.

42. In considering the matter of procedural fairness during the disciplinary process, the Tribunal is tasked to look into the Company's dealings with the Aggrieved Worker. The Tribunal finds that the Aggrieved Worker was charged in writing with the offences, namely, Misappropriation of Funds and Forgery. As such, section 22 of the Labour Relations Code is applicable in determining whether the Aggrieved Worker was unjustifiably dismissed.
43. It is noted that after the issue was brought to the attention of the Chief Accountant, Mr. Stephenson, a preliminary investigation was conducted. It is also noted that a meeting was called with the Aggrieved Worker to discuss same. As a result of that meeting, the Company placed the Aggrieved Worker on three (3) days suspension without pay pending further investigation. Due to the on-going investigation, the suspension period was extended without pay. It is the Company's evidence that the suspension without pay was not meant to be punitive but to separate the Aggrieved Worker from further interactions with its customers while the investigation was conducted. Further, the Company, through its witness Mr. Stephenson, stated that the Aggrieved Worker's salary during the suspension period and up to his last day at the Company was calculated at the end of the disciplinary process.
44. It was submitted by the Aggrieved Worker's representative that there was a breach of the Labour Relations Code as the Aggrieved Worker was placed on the said suspension without being charged, being called to a disciplinary hearing to state his case, not afforded representation and not given the opportunity to appeal the Company's decision to place the Aggrieved Worker on said suspension. Whilst the Tribunal notes the Company's intention at the time, no evidence was provided to show the Tribunal that the monies during the suspension period was calculated and made due to the Aggrieved Worker. As such, it may be considered a breach of the Labour Relations Code and the principles of natural justice.
45. The Aggrieved Worker argued that Mr. Stephenson played more than one (1) role during the disciplinary process which presented a case of bias. The Tribunal does not agree with



the Aggrieved Worker's submission and took into consideration the evidence that Mr. Stephenson conducted the investigation, called the Aggrieved Worker into a preliminary meeting and as a result of that meeting he proffered charges against the Aggrieved Worker. The Tribunal finds that Mr. Stephenson didn't play any further role in the disciplinary process after the charges were laid which would have resulted in the process being tainted with bias.

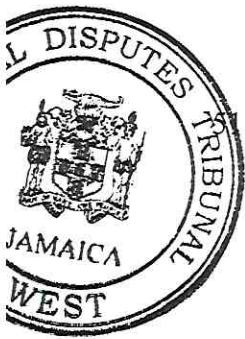
46. After being charged, the Aggrieved Worker was invited to a disciplinary hearing by letters dated November 20, 2020 and November 24, 2020. The disciplinary hearing was held on November 26, 2020 where the Aggrieved Worker was given an opportunity to state his case. The hearing proceeded without the Aggrieved Worker having a representative present and the Tribunal accepts the Company's evidence which was corroborated by the Aggrieved Worker that he was asked if he had a representative in which he responded no. It is the Company's evidence that Mr. Taylor, chairman of the disciplinary hearing, also asked him at the start of the hearing if anyone else was coming in which the Aggrieved Worker replied no. No evidence was provided to the effect that the Aggrieved Worker had an issue with the hearing proceeding without a representative nor did the Aggrieved Worker request an adjournment at any time during the hearing.
47. It is the Aggrieved Worker's submission that the hearing proceeding without him having a representative present was a breach of the Labour Relations Code. The Tribunal does not agree with such a submission and states that the Code provides for the employee in question to be given the right to be accompanied by a representative of his or her choice. That does not preclude a company from proceeding with a disciplinary hearing if the employee in question does not have a representative. In the instant case, the Aggrieved Worker was informed of this right in letters dated November 20, 2020 and November 24, 2020. In addition, the Aggrieved Worker was given two (2) opportunities to ask for an adjournment if he desired a representative to be present. With that said, the Tribunal does not accept the Aggrieved Worker's evidence that he was not aware that he needed a representative.



48. It is the Company's evidence and submission that the chairman of the disciplinary hearing informed the Aggrieved Worker of his intention to recommend for his termination based on the evidence and gave him the option to resign. On the other hand, it is the Aggrieved Worker's evidence and submission that he was forced to resign. It is noted that further in his evidence he stated that the Company gave him the option to resign. The Tribunal accepts the Company's evidence and finds that the Aggrieved Worker was given the option to resign and not forced to resign. In addition, the Aggrieved Worker didn't provide any evidence as to how the Company forced him to resign.

49. The Aggrieved Worker submitted that after the disciplinary hearing he returned the company's shirt, cellular phone and handbook upon the request of the Human Resources Manager. He indicated that he didn't return to work nor did he provide an explanation for his continued absence. Further, both the Company and the Aggrieved Worker testified and is accepted by the Tribunal that the Aggrieved Worker was not terminated by the Company nor was a termination letter produced.

50. The Aggrieved Worker testified that he made no attempts to seek alternative employment in order to mitigate his circumstances as he was still on suspension. The Tribunal does not accept the Aggrieved Worker's evidence as he was informed in writing of the expiration of said suspension in letter dated November 20, 2020.



Notwithstanding that the suspension period during the investigations may be considered punitive, the Tribunal is tasked to examine the entire process in determining whether the termination was justifiable. The Tribunal reiterates that it agrees with both parties and finds that the Aggrieved Worker was not terminated by the Company. The Tribunal also finds it note-worthy to state that no evidence was provided to prove that the Aggrieved Worker resigned from his job. The Tribunal finds that returning the company's properties alone is not sufficient to make a determination that the Aggrieved Worker resigned. On the other hand, the action of the Aggrieved Worker in returning the Company's properties is sufficient to infer his intent not to return to work at the very least without any explanation and thereby abandoning his job.

52. Thus, the Tribunal finds that the Aggrieved Worker was not unjustifiably terminated.



AWARD

The Tribunal awards that:

- (a) Mr. Patrick Allen was not terminated from his job;
- (b) Mr. Patrick Allen abandoned his job, thereby repudiating his contract of employment.

DATED THIS 24th DAY OF NOVEMBER 2023



Sadeera Shaw
Chairman

Rodcliffe Robertson
Member

Keith Fagan
Member

Witness

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