

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 61/2024

SETTLEMENT OF DISPUTE

BETWEEN

JAMAICA POLICE CO-OPERATIVE CREDIT UNION
LIMITED

AND

MS. AMMESHA SAMUELS

AWARD

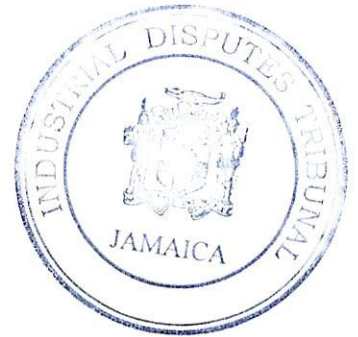
I.D.T. DIVISION

MR. DONALD ROBERTS, C.D., J.P.	-	CHAIRMAN
MR. ERROL BECKFORD	-	MEMBER
DR. DENESE MORRISON, J.P.	-	MEMBER

APRIL 27, 2026

DISPUTE NO. IDT 61/2024

INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN



JAMAICA POLICE CO-OPERATIVE CREDIT UNION LIMITED
(THE COMPANY)
AND
MS. AMMESHA SAMUELS
(AGGRIEVED WORKER)

REFERENCE

By letter dated October 22, 2024, the Hon. Minister of Labour and Social Security, pursuant to Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act, 1975 ("the Act") referred to the Industrial Disputes Tribunal ("the Tribunal") for settlement, the dispute between **Jamaica Police Co-operative Credit Union Limited** and **Ammesha Samuels** with the following Terms of Reference: -

"To determine and settle the dispute between Jamaica Co-operative Credit Union Limited on the one hand, and Ammesha Samuels on the other hand, over the termination of her employment by reason of redundancy".

DIVISION

The division of the Tribunal selected in accordance with Section 8(2)(c) of the Act to deal with the industrial dispute comprised:

Mr. Donald Roberts, C.D., J.P.	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2)(c)(ii)
Dr. Denese Morrison, J.P.	-	Member, Section 8(2)(c)(iii)

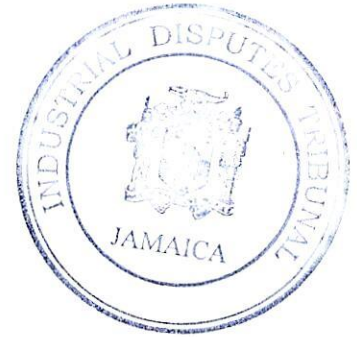
REPRESENTATIVES OF THE PARTIES

The **Credit Union** was represented by:

Mr. Gavin Goffe	-	Attorney-at-law
Ms. Nicole Taylor	-	Attorney-at-law
Ms. Drew Wheatley	-	Attorney-at-law

In attendance:

Mr. Wray Palmer	-	General Manager
Ms. Donna Brown	-	HR Manager



The **Aggrieved** was represented by:

Senator Lambert Brown, C.D.	-	Industrial Relations Consultant
Ms. Natalia Casado Desulmè	-	Attorney-at-law

In attendance:

Ms. Ammesha Samuels	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS

The parties submitted Briefs to the Tribunal after which they were allowed to lead their evidences through thirty-three (33) exhibits as well as oral testimonies. A total of sixteen (16) sittings were held between February 26, 2025 and March 11, 2026.

FACTUAL BACKGROUND

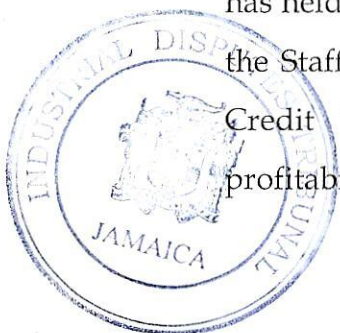
1. The Jamaica Police Co-operative Credit Union Limited ("the Credit Union"), was formed in 1955 to encourage collective savings and to provide loans to members of the Jamaica Constabulary Force. Ms. Ammesha Samuels ("Ms. Samuels" or the aggrieved worker") was employed in January 2017 as a Senior Officer in the Marketing and Communications Department of the Credit Union, a position she held until her termination by reason of redundancy in November 2019.
2. Sometime in October 2019 the Credit Union advised the staff that as a result of declining profitability over a five-year period the Marketing and Operations Department were likely to be affected by way of a redundancy exercise.

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3. On November 19, 2019, Ms. Samuels received a letter informing her that her position as Senior Officer - Marketing and Communications would cease to exist as of November 22, 2019, and as a consequence her services would be terminated by reason of redundancy.
4. On November 20, 2019, Ms. Samuels advised the Credit Union by way of email correspondence that she rejected the redundancy and redundancy payments. She, however, received an email correspondence on November 22, 2019, inviting her to apply for available vacancies across the Credit Union.
5. Ms. Samuels, through her lawyer, wrote to the Credit Union on August 17, 2020, contesting the redundancy and alleging that her termination was unjustifiable.
6. The dispute was subsequently referred to the Ministry of Labour & Social Security but remained unresolved after several efforts at conciliation. By way of a letter dated October 22, 2024, the Minister of Labour and Social Security, pursuant to his powers under Section 11 of the Labour Relations & Industrial Disputes Act (LRIDA), referred the matter to the IDT for determination and settlement.

THE CREDIT UNION'S CASE

7. Mr. Goffe informed the Tribunal that between 2015 and 2019 the Credit Union suffered a period of financial decline which led it to engage in a redundancy exercise in order to save cost. The two areas most likely to be affected were said to be Operations and Marketing. Only two (2) positions were impacted by the redundancy exercise in these areas.
8. The Credit Union's first witness was Mr. Wray Palmer, the General Manager, who has held that position for the past seven (7) years. Mr. Palmer said he was present at the Staff Meeting held on October 31, 2019, along with Ms. Samuels, at which the Credit Union's financial performance was reviewed, noting the declining profitability and the likely effects this would have on the Operations and Marketing



Departments by way of staff cuts. He said at the end of the presentation he solicited responses, but did not receive any feedback from the staff.

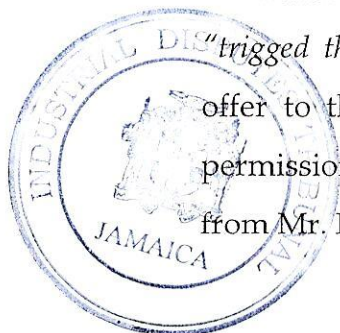
9. Mr. Palmer said that the redundancy calculation for Ms. Samuels was attached to her November 19, 2019, termination letter, however, she did not sign the release and discharge document. He stated that he was advised that she received the cheque, and is aware that Ms. Samuels did not return the redundancy payments although she indicated that she was contesting the redundancy.
10. He explained that the low profitability required the Credit Union to meet the minimum Capital Adequacy Ratio set by the Regulators of eight (8) percent. He said the Credit Union is a not-for-profit organisation, and must generate a surplus which is *"owned by the members."*
11. Under cross examination, Mr. Palmer asserted that the decision to carry out the redundancy exercise was taken by the Credit Union, he was unable to give a definitive date but said it would have been after the October 31, 2019, consultative meeting with the staff. He acknowledged that there was no direct discussion with the aggrieved worker before the October 31, 2019, consultation but that on November 1, 2019, the HR Manager, Ms. Donna Brown requested feedback from the staff but received none. The redundancies, he said, took effect on November 22, 2019 and only two (2) positions were affected.
12. Further in his testimony, the General Manager recognised that Ms. Samuels had rejected the redundancy in her November 20, 2019, email to him and had demanded that the cheque be cancelled. He said neither he nor the Credit Union had requested that the cheque be returned. The totality of the consultation, Mr. Palmer averred, was the October 31, 2019, Staff Meeting and the November 1, 2019, email to staff.



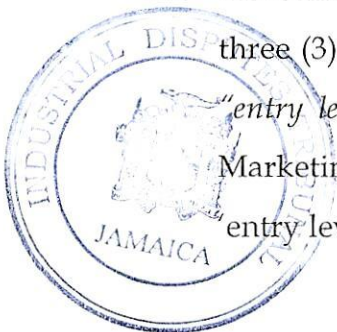
13. Mr. Palmer declared that at the October 31, 2019, meeting and his November 1, 2019 email, he could not say how many positions were likely to be affected as a result of the redundancy exercise, but knew before the meeting that redundancies were a real possibility.
14. Mr. Palmer was recalled as a witness where he acknowledged the Notes of Financial Statements for the period ending December 31, 2019, and the Statement of Income and Expenditure for the same period, both extracted from the Credit Union's 2019 Annual Report.
15. Under cross examination, Mr. Palmer reiterated that the reason for the redundancy was based on low profitability being experienced by the Credit Union over the period 2015 to 2019. He noted that at the time of the redundancies there were three (3) other vacancies existing in the Credit Union, one would have been equivalent to Ms. Samuels' present position and *"the other two likely to be lower."*

AGGRIEVED WORKER'S CASE

16. Senator Brown asserted that Ms. Samuels' termination by reason of redundancy took place one week after her Counsel had written to the Credit Union disputing certain allegations made against her by the General Manager. He stated that the redundancy was *"a contrived and disingenuous pretext"* to terminate Ms. Samuels' services *"under the guise of legitimate redundancy,"* and would lead evidence to prove that the dismissal was in breach of the Labour Relations Code ("the Code")
17. Ms. Samuels gave testimony on her own behalf. She stated that she started working at the Credit Union in Kingston in February 2017, and had a good working relationship with Mr. Palmer up until June 2018. She said the incident(s) which *"triggered the animosity"* between herself and Mr. Palmer began with a scholarship offer to the Caribbean Maritime University (CMU), for which she had obtained permission from the Accounts Manager. However, she received a memorandum from Mr. Palmer *"chastising her"* for the decision.



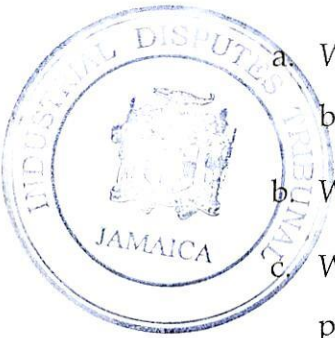
18. A second incident occurred in June 2018 involving the then HR Manager, Ms. Allison Simpson. Ms. Samuels said that the HR Manager was accused of fraud in relation to an error occurring on her (Ms. Samuels) application for vacation leave and overseas travel. She said there were several correspondences from the General Manager to herself and Ms. Simpson, eventually leading to the termination of Ms. Simpson's services for forgery of the vacation leave document. During the disciplinary hearing, Ms. Samuels claimed to have testified on behalf of Ms. Simpson.
19. Ms. Samuels mentioned the June 12, 2019, letter to her from Mr. Palmer alleging unacceptable conduct and performance, and the subsequent response from her Attorney, Nicole C. Gordon, on November 12, 2019, denying those allegations.
20. Ms. Samuels said there was no indication prior to the October 31, 2019, meeting that the issue of redundancy would be raised. She further stated that the November 1, 2019, letter to the staff re: 'Redundancy Consultation' prompted her to engage a Lawyer based on the allegations which were made against her in the June 12, 2019, letter.
21. The aggrieved worker further testified that she did not sign the 'Redundancy Calculations' form and that she rejected the reasons for the redundancy and the redundancy payment in her Memorandum to Mr. Palmer dated November 20, 2019. She asserted that the redundancy affected her financially in light of her pending marriage and the struggles with Covid. She eventually secured a job at the Overseas Examination Commission.
22. Ms. Samuels admitted under cross examination that she did not apply for any of the three (3) positions that were offered by the Credit Union as she believed they were "entry level jobs" and the salary would have been lower than that of the Senior Marketing Officer. She said that she had no document to prove that the jobs were 'entry levels'



23. Ms. Samuels said she did not agree with the statement contained in the Minutes of the October 31, 2019, meeting that the financial performance of the Credit Union over the last five (5) years revealed a decline in profitability, as “no basis was provided by the general manager.” She, however, conceded that no feedback was provided by her based on the November 1, 2019 request, despite her “heightened alertness” and that there was no written communication from her or her Lawyer between the period November 21, 2019 and August 17, 2020. She claimed that there was a new hire in her role as Marketing Officer.
24. The aggrieved worker admitted that although she indicated her rejection of the redundancy and the redundancy payment, she did not inform the Company that she was taking the money under protest; however, she negotiated the cheque, which was lodged to her account the following day.

ISSUES

25. The Tribunal contemplated the following issues in consideration of its decision:

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- a. Whether a genuine redundancy situation existed based on legitimate business reasons pursuant to the law governing redundancy;
- b. Whether Ms. Samuels waived her right to make a claim for unfair dismissal;
- c. Whether the redundancy was in compliance with the Code, and in particular whether a fair process was used, and there was a fair attempt to find an alternative to the redundancy.

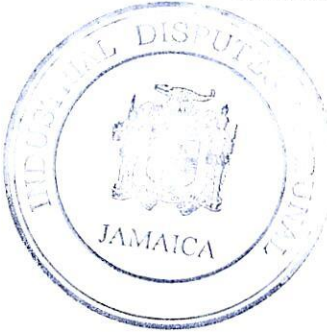
a. Whether a genuine redundancy situation existed based on legitimate business reasons pursuant to the law governing redundancy

26. Redundancy is a potentially fair reason for dismissal under the Employment (Termination & Redundancy Payments) Act of 1974 (“the ETRPA”). In that regard, the Tribunal’s primary focus must centre on causality, that is, identifying the economic circumstances giving rise to a prospective redundancy situation, rather



than venture into more functional explanations about the goals or purpose of the redundancy exercise.

27. It is arguably the case that a genuine redundancy needs to be substantively and procedurally justified, which means not only must the employer has genuine reasons for the redundancy, but should adopt a fair process in making the employee redundant. We will not, however, at this juncture be pursuing the fairness of the redundancy in all its circumstances, but will remain confined to 'operational requirements' in an effort to determine whether Ms. Samuels' redundancy was wholly or partially attributable to the state of affairs existing at the Credit Union at the material time. The elements of a fair process, identified as one of the issues to be examined, will be addressed subsequently.
28. We are persuaded in this view by the dicta of Morrison, JA in the matter **Branch Developments Limited and Industrial Disputes Tribunal and the University and Allied Workers Union [2015] JMCA Civ. 48**, where he opined:



"My conclusions on this issue are therefore as follows. Given Batts J's finding, from which there is no appeal, that the evidence in this case did in fact establish a situation of redundancy at the hotel, the IDT's finding to the contrary effect was Wednesbury unreasonable and is, on that basis, prima facie liable to be set aside. But, in the light of provisions of the Code, and the way in which they have been applied by the decisions of the courts, the learned judge was entirely correct in thinking that, as a separate matter, the manner of the termination of the workers' employment was a relevant factor in his consideration of whether the IDT's decision in their favour could be sustained." [Para. 62]

29. The provisions of Section 5(2) of the ETRPA regulate matters pertaining to redundancy and redundancy payments. It states that:

"... an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or partly to -

- a) *the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him or has ceased, or intends to cease, to*

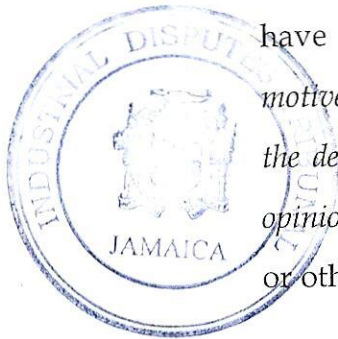


carry on that business in the place where the employee was so employed; or

b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish; or

c) -----"

30. The use of the words "ceased" and "diminished" in Section 2 of the statute have been interpreted to mean "cease or diminish either permanently or temporarily and from whatsoever cause". There appears to be no local authority that could assist with a better interpretation of that section¹. We note, however, that a similar meaning applies in the United Kingdom's Employment Rights Act, 1996, where the Courts have ruled that "it was not the Tribunal's tasks to enquire into the management's motives...", and that "... there cannot be any investigation into the rights and wrongs of the declared redundancy." It is therefore necessary to point out that the "subjective opinion of the employer" is not decisive in classifying the dismissal as potentially fair or otherwise²



31. To be clear, it is not the business of this Tribunal to attempt to engage in a statutory interpretation of Sections 5(2)(a) or (b) of the ETRPA - far beyond our competence to do so - unless, as Mr. Goffe rightly points out, there are "exceptional circumstances" that are beyond redemption.

32. Reference will here be made to part III, paragraph 11 of the Code, which addresses the issue of redundancy, recognising the employer's role in ensuring that workers feel "... secure in their employment..." so long as their continued employment is "...consistent with operational efficiency". [emphasis added]

¹ Harrison, JA in an opinion on the matter Computers & Controls (Jamaica) Ltd v Saddler (Leonard), Supreme Court Civil Appeal No. 65 of 2005 made this point {See para 11, page 24 of the judgement}

² See Simon Deakin & Gillian S. Morris (2006) Labour Law, Fourth Edition, Hart Publishing, page 533.

33. On the evidence, the Credit Union has been consistent in stating the reason for the redundancy exercise. The Minutes of the October 31, 2019 'All Staff Meeting', noted under the heading: 'Review of Financial Performance', the following statement from the Accounting Manager:

"...the P.E.A.R.L standard is being met for the most part, but there was concern with the productivity ratio." Productivity ratio should be 60% or below, last few months saw the ratio exceeding the 60% percent maximum; August 66%, September 67%, October 64%." He said we need to conserve reduce expenses for example turn off lights when not in use, recycle paper as demonstrated by the accounts department etc. overall [we] must reduce expenses and increase profit."

34. Later in the meeting the General Manager followed up with the ensuing comments:

"... a review of JPCCU's financial performance over the five years (2015-2019) has revealed a decline in profitability. The ratio of operational expenses to employee has declined from 52 percent in 2016 to 66 percent in August 2019 and continued to decline. Revenue per employee has shown a similar trend over the same period. Revenue per employee has declined by 26 percent from \$9.1M in 2016 to \$6.7M in 2019.

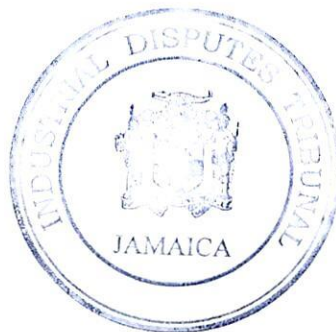
He said Surplus per employee declined 21 percent from \$1.4m in 2017 to \$1.1m in 2019. While surplus increased 17 percent in 2017 compared to 2016, it declined 8 percent in 2018 and a further 15 percent in 2019.

Over the years, despite steady increase in revenues, surplus has not grown at a level sufficient to sustain healthy capital which is required for organizational expansion and growth. The Credit Union's institutional capital continues to be at just about the minimal required level of 8 percent.

He told the meeting that given the circumstances the Board of Directors decided to cut staff and make some positions redundant. He informed the staff that the departments to be affected by the redundancy were the Operations Department and Marketing Department.

35. The following day, November 1, 2019, the General Manager addressed a letter to the staff, the contents of which have been reproduced below:

"In furtherance of our discussion at our staff meeting on October 31, 2019, where it was explained that owing to the low profitability of the Credit Union over the last 5 years (2015-2019) and the financial

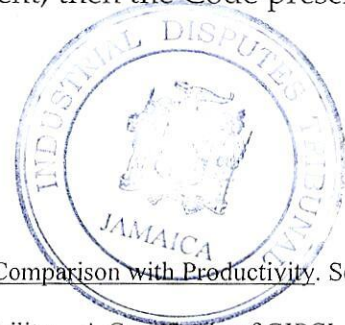


challenges it experienced in the business market, it appears that the company has no other option but to make some positions within the Credit Union redundant. You were informed that the marketing and operations departments are likely to be affected by the possible redundancy exercise..."

36. It is the view of the Tribunal that there is a statistically significant positive correlation between operational efficiency and sustained profitability. We subscribe to the view that the operational efficiency of an organization is a measurement of its profit relative to its operational costs³, and that low profitability can trigger a decision to minimize resource output through redundancies.⁴
37. In this regard, the evidence clearly shows that the Credit Union has been consistent in articulating its position that there has been a decline in its profitability (not profit) over a five-year period, which could conceivably affect its operational efficiency, with consequential effects on redundancy. Suffice it to say that the Credit Union has proven, to our satisfaction, that operational efficiency was at risk, and therefore, it is beyond the scope of this panel to attempt to conduct a forensic audit of its financials, 'enquire into its motives' or 'carry out an investigation into the rights or wrongs of the actual redundancy.'
38. The case, in our view, has therefore been made out that the redundancy was based on the genuine state of the Credit Union's declining profitability over the years 2015 to 2019. Ms. Samuels' testimony alluding to no 'diminishing requirements' for the work she performed, could not, without more, be seriously entertained. Once a threat to operational efficiency becomes apparent, then the Code prescribes a process for undertaking a redundancy exercise.

³ Hayes, Adam (Nov. 2025) Operational Efficiency: Definition, Example and Comparison with Productivity. See <https://www.investopedia.com/terms/o/operationalefficiency.asp>

⁴ Dhillon, Amritpal, et. al. Impact of Operational Efficiency on Overall Profitability - A Case Study of GIPCL, Working Paper No. 136/2012.



b. Whether Ms. Samuels waived her right to make a claim for unfair dismissal

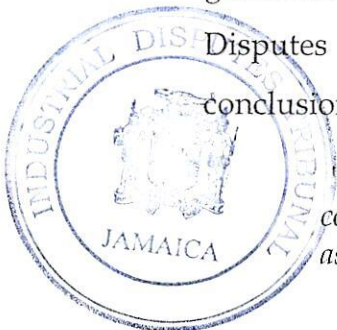
39. The courts have long seen the settling of issues as to whether waivers exist in redundancy disputes, as a mixed question of law and facts. In the determination of this matter, the Tribunal has been greatly assisted by the representatives on both sides through the cogent arguments and conspicuous clarity with which they have presented their case. We view as quite useful the submissions of the several case laws provided by both parties.

40. Senator Brown raised (but never sustained) the argument on whether the Tribunal should determine the matter of waiver in light of the fact that there was no averment in the pleadings by Mr. Goffe to establish that the waiver was an issue of contention for the Credit Union. As we understand Brooks, JA to be saying in his reasoning on the matter of the Tribunal's jurisdiction held in **The Industrial Disputes Tribunal and University of Technology, Jamaica [2012] JMCA Civ. 46**, the Tribunal operates in its own original jurisdiction where it is a finder of fact. He went on to say that:

"In my view, the IDT is entitled to take a fully objective view of the entire circumstances of the case before it, rather than concentrate on the reasons given by the employer. It is to consider matters that existed at the time of the dismissal, even if those matters were not considered by, or even known to, the employer at that time." [page 22, para. 40]

41. To the extent that the bare minimum of facts are presented, the Tribunal is left to rely on the dictum of Sykes, J. (as he then was) in **National Commercial Bank v The Industrial Disputes Tribunal and Peter Jennings [2016] JMCA Civ 24**, for guidance. The Learned Judge opined that the Labour Relations & Industrial Disputes Act vests the IDT with certain rights, notable the right to draw its own conclusions from the facts presented. He stated thus:

"questions of facts and their interpretation and not for the court...no court has the authority to say that the IDT should have found one fact as opposed to another once there is evidence to support the facts found"



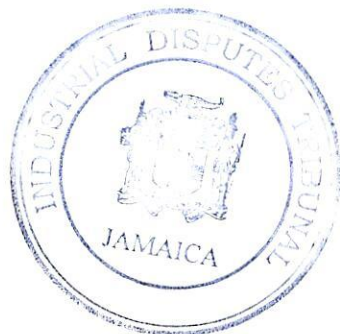
by the IDT... [and] no court can tell the IDT what weight to give to any fact or inference drawn from a fact."

42. The term 'waiver' as defined in the Black's Law Dictionary, 12th Edition, means:

"the voluntary relinquishment or abandonment – express or implied – of a legal right or advantage. The party alleged to have waived a right must have had both knowledge of the existing right and the intention of forgoing it."

43. The applicable principles governing the concept of waiver, for our purposes, are set out in the Privy Council's ruling in the **Flour Mills case**⁵, where it states:

"...Waiver, as a species of estoppel by conduct, depends upon an objective assessment of the intentions of the person whose conduct has constituted the alleged waiver. If his conduct, objectively assessed in all the circumstances of the case, indicates an intention to waive the rights in question, then the ingredients of a waiver may be present. An objectively ascertained intention to waive is the first requirement. JFM's case falls at this hurdle. The cashing of the cheques took place after the Union had taken up the cudgels on the employees' behalf, after the dispute had been referred to the Tribunal and after arrangements for the eventual hearing had been put in train. In these circumstances the cashing of the cheques could not be taken to be any clear indication that the employees were intending to abandon their statutory rights under section 12(5)(c). Nor is there any indication, or at least no indication to which their Lordships have been referred, that JFM or any representative of JFM thought that the two employees were intending to relinquish their statutory rights. Even assuming that the cashing of the cheques could be regarded as a sufficiently unequivocal indication of the employees' intention to waive their statutory rights, the waiver would, in their Lordships' opinion, only become established if JFM had believed that that was their intention and altered its position accordingly... Their Lordships would add that they do not see this as a case where the employees were put to an election between inconsistent remedies, i.e. cashing the cheques or pursuing their statutory remedy..."



44. Mr. Goffe cited several cases to support his contentions. A number of these we will review, particularly those which, to our mind, are distinguishable on the facts from the case at bar. In the **Jamaica Police Co-operative Credit Union Limited**

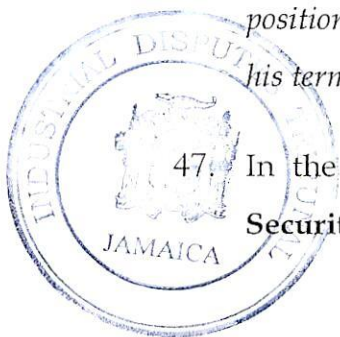
⁵ See *Jamaica Flour Mills v. Industrial Disputes Tribunal and National Workers Union*, Appeal No. 69 of 2003. Delivered 23rd March 2005, (page 8 of Advance Copy).

and the Ministry of Labour [2019] JMS.C Civ. 67, two (2) employees were made redundant by the Credit Union, both were paid redundancy entitlements which the claimant argued they accepted "*without protest or demur*". The court agreed that in the absence of any form of protestation, the ingredient of a waiver existed.

45. In the **National Commercial Bank v. Minister of Labour and Social Security** [2023] JMS.C Civ. 145, Mrs. Makeda Ramgeet-Baugh's position at NCB was up for redundancy and she was offered the opportunity of applying for a number of alternative posts for which she was unsuccessful. She was made redundant and three (3) months after made the claim that her termination was unjustifiable. It was the employee's evidence that "*she did not express any objection to the redundancy exercise and her termination...*"; she, however, did not sign the requisite forms provided to her. The court quashed the referral on the grounds that there was "*... no indication that the Minister considered this [the issue of waiver] at all before he referred the matter to the Tribunal.*"

46. In **Federal Capital Investment & Finance Limited v. The Minister of Labour & Social Security** [2025] JMS.C Civ. 03, the employee, Mr. Jason Burgher was dismissed by his employer. The Company's contention was that he received and encashed a cheque for outstanding payments and for the next three (3) months made no complaint regarding his termination. Mr. Burgher contradicted the assertion that he did not protest. Beyond his oral testimony, there was no material evidence to support his claim. The court ruled that "*where the material before the Minister is in conflict or there is insufficient material before him for a decision on the issue of waiver...*" then the ingredients of waiver would not have been met. The court concluded that "*the claimant (employer) failed to demonstrate that it had acted to alter its position in accordance with its belief that Mr. Burgher had waived his rights to challenge his termination.*"

47. In the case of **SCJ Holdings Limited and the Ministry of Labour & Social Security** [2023] JMS.C Civ/ 89], Mr. Naraynsingh received a letter on December

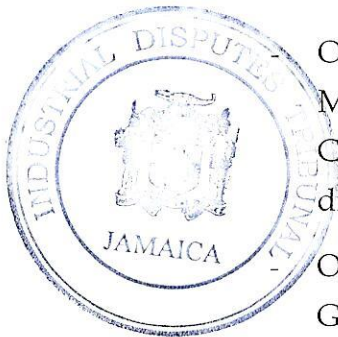


16, 2020, informing him that *"the post of Technical Services Manager was being eliminated from the company's establishment with immediate effect."* Mr. Naraynsingh deponed that he verbally challenged the redundancy at the December 16 meeting, a position expressly denied by the Company and reiterating that he accepted the redundancy payments without demur. The Company argued that they only became aware of the dispute sometime early January, 2021. While denying the application to quash the Minister's referral to the Tribunal the Court reasoned thus: *"the referral by the Minister concerns an issue of termination, the lawfulness of which falls to be determined at the date of termination looking back but not forward."*

48. In the four (4) cases cited above, the applications were to quash the Minister's referral because the aggrieved workers did not at the time of the termination protested. It is to be noted that in two of these cases, however, the aggrieved workers could provide no material evidence, beyond the fact that they had verbally protested. The courts on those occasions found this sufficiently compelling to quash the applications and have the matter referred to the Tribunal for determination. In the other two cases the courts argued that the ingredients of a waiver existed as there was no evidence (verbal or otherwise), that the aggrieved workers protested their dismissal at the relevant date.
49. The issue of a possible redundancy situation based on the Credit Union's declining profitability was first raised at the Staff Meeting of October 31, 2019. Both the Operations and Marketing Departments were identified as the areas most likely to be affected. The following factual evidence was provided:

On November 19, 2019, Ms. Samuels received a letter from the General Manager advising her that the post of Senior Officer - Marketing and Communications would cease to exist as at November 22, 2019. A release and discharge statement showing her redundancy calculations was attached.

On November 20, 2019 at 9:29 am Ms. Samuels emailed Mr. Palmer (the General Manager) stating the following:



"Having received a redundancy package from Mr. Michael Martin today November 20, 2019, I am writing to indicate that said redundancy and redundancy payment has been rejected by me.

There are several concerns with regards to the basis of the redundancy having received a letter from you in June to which my Attorney would have addressed and that fact that only 2 personnel were made redundant.

The matter will be addressed by my attorney who is attached to this email.

Kindly have FGB cheque #010615 representing redundancy payment cancelled and my regular salary paid.

Please also have correspondence treating with my pension expediated as I was not presented with a breakdown of those funds."

- On November 22, 2019 at 11:16 am, Mr. Palmer emailed Ms. Samuels under the subject heading: 'Vacant Posts'. The contents of the email is reproduced in its entirety:

"As you are aware, the post of Senior Marketing and Communications Officer, which is held by yourself will become redundant on November 22, 2019.

In light of this, you are being invited to apply for any of the following posts which are currently vacant:

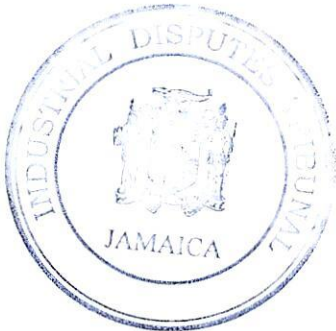
They are:

1. Loans Officer/Branch Supervisor. ***This vacancy exists at Montego Bay Branch (emphasis added)***
2. General Clerk. ***This vacancy exists at St Mary Branch (emphasis added)***
3. Operations Administrative Assistant. ***This vacancy exists at Portmore Corporate (emphasis added)***

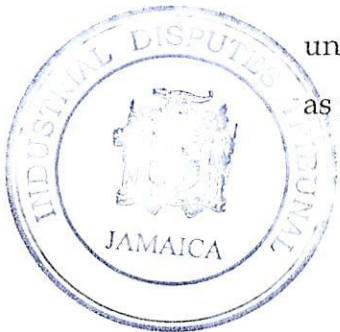
Should you have an interest in any of the above posts you may submit your application to the Human Resources Department addressed to: rhenry@jpccu.com.jm

Deadline for application is Friday November 29, 2019."

50. In overcoming our diffidence and applying our understanding of the gravamen of their Lordships ruling in determining whether Ms. Samuels waived her rights to challenge her dismissal, we have concluded that she did not. The following are our reasoning:



- a. That the conduct of Ms. Samuels, "*objectively assessed in all the circumstances of the case*", did not indicate her intention to waive her rights. At the material time, that is the very day she received the letter of termination, she emailed Mr. Palmer stating, without equivocation, her objection to the redundancy. Not only did she protest in writing, she did not sign the release and discharge statement showing the redundancy calculations. In our view, the Credit Union's attempt to show that "*an objectively ascertained intention*" on the part of Ms. Samuels to waive her right in 'all the circumstances' existed, have failed this first hurdle.
- b. Their Lordships argued that the workers ought not to be "...put to an election between inconsistent remedies, i.e. cashing the cheques or pursuing their statutory remedy..." We believe this position would equally be applicable to Ms. Samuels.
- c. Whether there was equivocation in Ms. Samuels' conduct as regards waiving her rights, the issue appeared to have been settled by the subsequent action of the Credit Union. In offering her alternative employment through an opportunity to apply for one of three existing vacancies, the Credit Union must have held the belief that Ms. Samuels was not waiving her rights, and therefore, altered its position through the November 22, 2019, email from the General Manager.
- d. The fact that the deadline for the submission was November 29, 2019, one week after the redundancy was to take effect, is a 'sufficiently unequivocal indication' that comports with the Credit Union's belief, as indicated in (c) above, that Ms. Samuels had not waived her rights.



c. Whether the redundancy was in compliance with the Code, and in particular whether a fair process was used, and there was a fair attempt to find an alternative to the redundancy

51. It is trite law that few restrictions ought to be placed on the employer's right to direct the business and organise the workforce as it sees fit. More effective restraints, however, are placed on the manner in which the employer conducts the process of redundancy. In that regard, we have to determine whether Ms. Samuels' dismissal by reason of redundancy followed a fair process and resulted in a fair outcome.

52. The Code sets out guidelines to determine the fairness of the process; for ease of reference we provide the full quote of paragraph 11, page 13. It states:

"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:

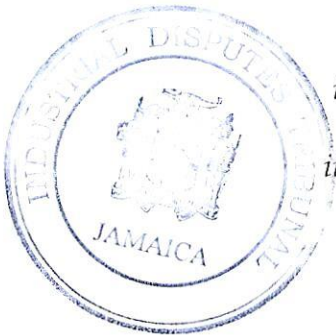
- i. *provide continuity of employment, implementing where practicable, pension and medical schemes;*
- ii. *in consultation with workers or their representatives take all reasonable steps to avoid redundancy;*
- iii. *in consultation with workers or their representatives evolve a contingency plan with respect to redundancies so as to ensure in the event of redundancy, that workers do not face undue hardship.*

In that regard, management should endeavour to inform the worker, trade unions and the Minister responsible for labour as soon as the need may be evident for such redundancies;

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

53. The effect of both the Act and the Code would, as the courts have argued, give regard to the worker's job as akin to his property. The common law has certainly adopted itself to this attitude as seen in the recent case of **Sandy Lane Hotel Co. Ltd and Juliana Cato and others [2022] CCJ 8 (AJ) BB**, where the CCJ offered this pertinent observation:

"...In reality people build much of their lives around their jobs. Their incomes and prospects for the future are inevitably founded in the expectation that their jobs will continue. For workers in many situations

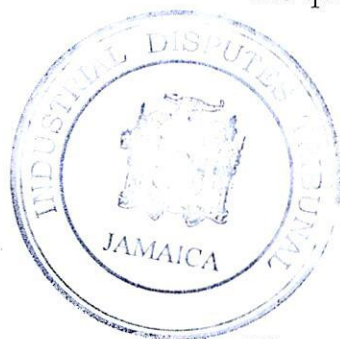


dismissal is a disaster. For some workers it may make inevitable the breaking up of a community and the uprooting of homes and families.”⁶

54. This is exactly what the Code promotes in exhorting the fact that *“work is a social right and obligation, it is not a commodity...”*, and there is the *“...need for workers to feel secure in their employment...”* It also speaks to the need in paragraph 19, for communication and consultation *“are necessary ingredients in a good industrial relations policy as these promote a climate of mutual understanding and trust...”*

55. The provision of Section 3(4) of the Act, we believe, is also useful in determining the question of fairness. The Act states as follows:

“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 Board in determining that question.”



56. The provisions of the Code are not performative, they are as ‘close to law as one can get.’

57. The first consultation meeting, according to Mr. Palmer’s testimony, was the Staff Meeting of October 31, 2019. The Minutes of that meeting was clear and beyond peradventure that *“...the Board of Directors decided to cut staff and make some positions redundant...”* and the departments to be affected would be Operations and Marketing. The language is precise and its meaning contrary to the provision of paragraph 11(ii) of the Code, where prior consultation should take place with the workers or their representatives *“to avoid redundancies”*. This was clearly not done.

58. Even if the letter to the staff on November 1, 2019, is to be accepted that *“no decision has yet been made”* in respect of redundancies, between November 1 and November 19, 2019, no consultation took place with the workers in Marketing and

⁶ The quote was taken from para. 526 of the 1968 Donovan Report in the UK on industrial relations.

Operations or the staff association, which represents Ms. Samuels. Neither the October 31, 2019, meeting nor the November 1, 2019 letter, could qualify as consultation within the meaning of paragraph 19(b) of the Code.

59. The Credit Union afforded no evidence of an initiative with the workers or the staff association - as part of their "*primary responsibility*" - to devise a contingency plan "*with respect to redundancies so as to ensure in the event of redundancy, that workers do not face undue hardship,*" as paragraph 11(iii) of the Code contemplates. [emphasis added]. Neither was there evidence to establish that the workers, the Staff Association and the Minister of Labour were advised prior to, that is, "*as soon as the need may be evident for such redundancies*", and not after or on the day it occurred.
60. Further, if there is an implied notion that the Credit Union having engaged in 'consultations' with the staff, and in the absence of feedback, should be released from any further responsibility, we would respectfully disagree. The fact is, the Minutes of the meeting and the letter to staff do not meet the threshold requirement of 19(b) of the Code where consultation requires the management to 'initiate discussions' through a "*genuine exchange of views and information*", and that "*all the necessary information for effective consultation is supplied.*"
61. The incidents preceding the redundancy have not been lost upon the Tribunal and would, 'in the round', be considered in this case. Mr. Palmer's letter of June 12, 2019, to Ms. Samuels raising several serious allegations of gross misconduct; Ms. Samuels feeling impelled to seek legal advice after the November 1, 2019, letter to the staff when the issue of redundancy in her department of only two workers, was determined; and the November 12, 2019, letter from her Attorney in response to the allegations.



62. Even where the management invited Ms. Samuels to apply for one of the three positions which were vacant (albeit after the redundancy was decided on and not before) no information was provided for effective consultation. Two of the three positions, it should be noted, could be considered unreasonable pursuant to Section 6(4)(b) of the ETRPA having regard to the fact that they were more than ten (10) miles from where she was first employed, and the offer was not made before November 19, 2019.

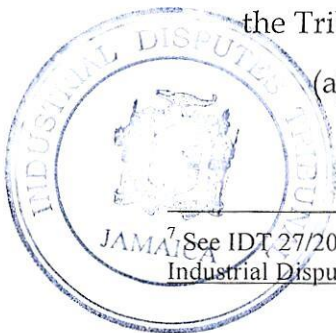
63. In respect of the third - Operations Administrative Assistant - on the face of it, it seems, hardly likely that such a position in a branch of the Credit Union could rank *pari passu* with that of a management position reporting to the General Manager. It is certainly the view of the Tribunal that it was the responsibility of the management to have taken the initiative to provide better particulars, more so in light of the fact that Mr. Palmer's testimony is that at least two of the positions were likely to be lower than that of Ms. Samuels'. Paragraph 19(a)(v) of the Code makes known that "*matters of interest to be communicated... is expected to have [been] readily available in easily understandable form,*" and paragraph 19(b)(i)(a) reference the fact that "*all the information necessary for the effective consultation...*" should be provided by the employer.

64. In effect, the consultation should have commenced, as the Privy Council said in endorsing the Tribunal's Award in the **Private Power** case "*...when the redundancy was definitely on, with a view to taking reasonable steps to avoid it, not when a decision had already been made and it would be futile and of no effect to consult.*"⁷

65. The Credit Union adduced no oral or written evidence to prove, in the minds of the Tribunal, that pursuant to the Code:

(a) effective and meaningful communication and consultation took place prior to the redundancy

⁷See IDT 27/2013 Private Power Operators Limited and UCASE, as well as Private Power Operators Limited and Industrial Disputes Tribunal and others [2025] UKPC 7



- (b) that there was any attempt to evolve a contingency plan to minimize the hardships wrought by the redundancy, and
- (c) that the management 'actively assisted' Ms. Samuels in securing alternative employment and facilitated her "*as far as is practicable in this pursuit.*"

66. Thus, having examined all the circumstances surrounding the dispute and the reasons and findings set out herein, the Tribunal finds that Ms. Samuels' dismissal by reason of redundancy was unjustifiable.

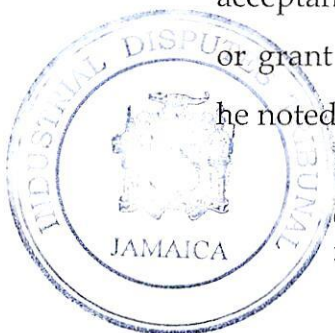
CONSIDERATIONS FOR AN AWARD

67. In applying the statutory provisions set out in Section 12(5)(c) of the Act, where the Tribunal, if it finds the employee's dismissal unjustifiable, and the worker does not wish to be reinstated, "shall" apply the provisions of subsection (c)(ii) in making an Award of either compensation or "*such other relief as the Tribunal may determine.*" In determining the quantum of the Award, we feel obliged to rely on a number of persuasive authorities for guidance.
68. First, the dicta of Williams., J. in the matter **Garnett Francis and Private Power Operators [2012] JMS.C Civ. 55, page 21**, stands out for scrutiny where he said:

"There is a discretion entrusted to the Tribunal where the level of quantum of compensation is concerned; and it is a wide and extensive discretion...[which] reveals no limit or restriction placed on the exercise of this discretion and no formula, scheme or other means of binding or guiding the Tribunal in its determination of what might be the level of compensation or other relief it may arrive at as being appropriate."

69. Second, in **Branch Developments Ltd [supra]**, Morrison, JA recognized the court's acceptance that the LRIDA confers a discretion on the IDT to order compensation or grant such relief as it appears appropriate under the circumstances. However, he noted that:

"... as with the exercise of any judicial discretion, the IDT's discretion to order such compensation as it "may determine" is not unfettered and must also be subject to the overriding criterion of reasonableness. In a



word, the exercise of the discretion must be rational. In my view, an award of compensation, without explanation, and purely reflective of the actual wages which the workers would have earned... was irrational.” [Para. 60]

70. Third, in support of Morrison, JA’s criteria of reasonableness, Wint-Blair, J. in her ruling in **Island Jamaica and Industrial Disputes Tribunal [2024] JMSC Civ 161** noted that -

“While there is no formula set down for the approach to compensation and it is not for this court to decide what weight should have been given to the various factors considered by the IDT...”

71. Fourth, in **Dench v Flynn & Partners**, the pleaded case of the aggrieved worker for the Tribunal to consider in the making of a just and reasonable compensation, the Court of Appeal held that -

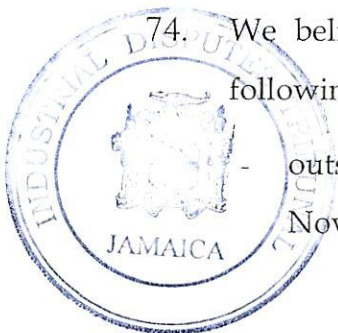
“A loss consequent upon unfair dismissal does not necessarily cease when an applicant gets employment of a permanent nature at an equivalent or higher salary than the employee previously enjoyed. To regard such an event as always putting an end to the attribution of the loss to the unfair dismissal could lead to an award which is not just and equitable...”

72. Tribunal rulings are not sanctified by previous Awards, and moreover, should not be locked into what we may consider precedent that invariably becomes ossified by time and circumstances.

73. Ms. Samuels was made redundant in November 2019. At the time of her redundancy she was earning just over \$350,000.00 per month (less incentive payments) in compensation [see exhibit 23]. She gained employment in June 2020 at the Overseas Examination Commission, where her total compensation as of August was \$225,252.08 per month [see exhibit 22].

74. We believe a just and equitable compensation should take into account the following:

- outstanding salary and benefits for the seven (7) month period between November 2019 and June 2020 when Ms. Samuels was unemployed;

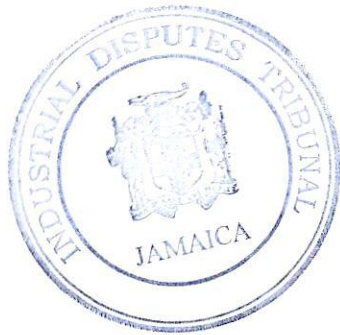


- a basic award calculated up to the date of the Award, using the Credit Union's redundancy formula as a guide, and the 2019 basic salary of Ms. Samuels (this is to make allowance for mitigation); and
- the deduction of the amount of Eight Hundred & Seventy Nine Thousand Eight Hundred & Seventy Two Dollars & One Cent (\$879,872.01) received by Ms. Samuels as redundancy payment from the total sum arrived at.

AWARD

75. In accordance with Section 12(5)(c)(ii) of the Act, the Tribunal hereby finds that Ms. Ammesha Samuels was unjustifiably dismissed by the Credit Union and orders that she be compensated in the amount of Four Million Four Hundred Thousand Dollars (\$4,400,000.00).

Dated this 27th day of April, 2026



.....
 Mr. Donald Roberts, C.D., J.P.
 Chairman

.....
 Mr. Errol Beckford
 Member

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

Witness:

.....
Tasha Pearce
 Ms. Tasha Pearce
 Acting Secretary of the Division