

INDUSTRIAL DISPUTES TRIBUNAL
Dispute No: IDT 35/2018

SETTLEMENT OF DISPUTE

BETWEEN

JAMAICA RAILWAY CORPORATION

AND

UNION OF SCHOOLS' AGRICULTURAL AND
ALLIED WORKERS (USAAW)

AWARD

I.D.T. DIVISION

MISS MARSHA SMITH	-	CHAIRMAN
MR. LESLIE HALL, J.P.	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

AUGUST 3rd 2020



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INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

JAMAICA RAILWAY CORPORATION
(THE COMPANY)

AND

UNION OF SCHOOLS' AGRICULTURAL AND ALLIED WORKERS (USAAW)
(THE UNION)

REFERENCE:

By letter dated September 26, 2018 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 the Jamaica Railway Corporation on the one hand and the Union of Schools' Agricultural and Allied Workers (USAAW) on the other hand over the Union's claim for:

(a) Compensation for work done in excess of the normal 40 hour work-week in respect of Security Officers and Gatekeepers;

(b) Payment of outstanding vacation leave;

and

(c) Payment of Tailoring Allowance to all qualified weekly paid workers."

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:

Miss Marsha Smith	-	Chairman
Mr. Leslie Hall J.P.	-	Member, Section 8 (2) (c) (ii)
Mr. Clinton Lewis	-	Member, Section 8 (2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The Company was represented by

Mr. Ransford Braham Q.C.	-	Attorney-at-Law
Miss. Kimberly Morris	-	Attorney-at-Law
Mr. Christopher Cowan	-	Attorney-at-Law

In attendance were:

Mr. Fitzroy Williams	-	Chief Executive Officer
Mr. Hopeton McLeish	-	Chief Accountant

The **Union** was represented by:

Mr. Keith Comrie	-	President
Mrs. Millicent Walker-Findlay-		Union Representative





SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during fourteen (14) sittings held between January 15, 2019 and January 20, 2020.

BACKGROUND TO THE DISPUTE:

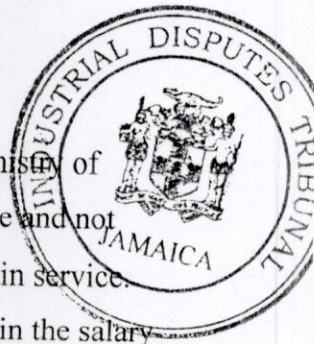
The Jamaica Railway Corporation (hereinafter called the Company) has its main office at 142 Barry Street, Kingston. The Union of Schools' Agricultural and Allied Workers (USAAW), hereinafter called the Union, has its office at 2 Wildman Street, Kingston. The Union has bargaining rights for workers employed to the Company. The Union made a claim to the Company. Several meetings were held at the local level, but the parties were unable to arrive at an agreement regarding the claim and as such the intervention of the Ministry of Labour and Social Security was sought. Despite conciliatory efforts no agreement was reached on the outstanding claim, consequently, the matter was referred to the Industrial Disputes Tribunal for determination and settlement.

THE UNION'S CASE:

During the presentation of its case, the Union indicated that items (b) and (c) of the Terms of Reference were settled at the local level. No evidence was led by the Union in relations to those items of claim. The union called six (6) witnesses in relation to item (a) of the Terms of Reference.

Security guards Mr. Rupert Palmer, Mr. Brian Larmond and Mr. Ernest Thervil gave evidence in support of the union's claim for compensation for work done in excess of the normal forty (40) hour work-week in respect of Security Officers. Mr. Rupert Palmer testified in chief that he worked a twelve (12) hour shift but did not receive overtime. During cross examination he admitted that he received a duty allowance. He said that he did not know that the policy of the Ministry of Finance & The Public Service did not permit overtime payments to monthly paid public sector workers. Mr. Brian Larmond, Security Supervisor, testified in chief that he worked a twelve (12) hour shift. Prior to the reclassification in 2008 he was paid fortnightly and received overtime at the rate of time and half for the extra four (4) hours. After the reclassification was done, the extra four (4) hours were paid by way of duty allowance.

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During cross examination he agreed that he was told that it was the policy of the Ministry of Finance & the Public Service for monthly paid employees to be given duty allowance and not overtime. He agreed that the train service was greatly reduced. It was just bauxite train service. He also agreed that after the reclassification in 2008 there was a substantial increase in the salary for Security Officers. Mr. Ernest Thervil gave similar evidence to that of Mr. Palmer and Mr. Larmond in relation to the receipt of a duty allowance and the twelve (12) hour shift.

Gatekeepers, Mr. Benjamin Graham and Mr. Mark Mitchell gave evidence in support of the Union's claim for compensation for work done in excess of the normal forty (40) hour work-week in respect of Gatekeepers. Mr. Benjamin Graham testified in chief that the train did not run on a scheduled time and that he was not paid duty allowance. During cross examination he disagreed with the suggestion that he was not entitled to overtime. Mr. Mark Mitchell testified in chief that he received no allowance nor overtime if the train ran late. During cross-examination he disagreed with the suggestion that he was not entitled to overtime.

Mr. Phillip Holness, a Train Controller, gave evidence in the relation to the usual hours of operation of the trains. During cross-examination he said that the train operation was unpredictable.

THE UNION'S CONTENTIONS:

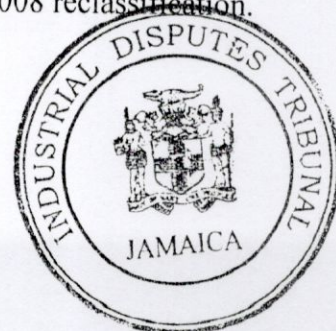
1. The security guards at the Company work twelve (12) hours per day or sixty (60) hours per week normal working hours is eight (8) hours per day and forty (40) hours per week. Any work done outside of that must be recognized as premium hours and paid for at time and half and double time for Sundays and Public Holidays.
2. Gatekeepers are required to be at work from 7:00am to 5:00pm without any form of compensation outside of forty (40) hours. Gatekeepers have to be at the base at all times, Mondays to Fridays for operators to have access to the train line. They should be given a special allowance for extra work.

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THE COMPANY'S CASE:

The Company called three (3) witnesses in support of its case. The first witness was Ms. Camille Angella Lowe, Chief Compensation Analyst for the Ministry of Finance & the Public Service. She testified in chief that it was the policy of the Ministry of Finance & the Public Service not to pay overtime to monthly paid employees. She maintained this position during cross-examination. The second witness was Mr. Fitzroy Williams, the Company's Chief Executive Officer. He testified in the chief that apart from service to the bauxite company, the Company provided no other rail service. Prior to the closure of the passenger service in 1992, the Company had island wide rail services. If the bauxite company no longer required rail service, the Company would have to close. The security guards are monthly paid and receive a duty allowance. Prior to 2008 they were paid fortnightly and received time and half for extra hours. The Ministry of Finance & the Public Service said the security guards are not entitled to overtime, but it approved a duty allowance. The normal train schedule was two round trips starting at 7:00am and ending at 5:00 to 5:30 pm. He estimated that the actual amount of time each gatekeeper was involved in the gatekeeping duties was two hours. The job description for the gatekeepers spoke to them being on call for six (6) days per week. He said that the job description reflected when the Company was fully operational, not just bauxite but also passenger and cargo service. The job description needed to be revised. The current work requirement was no longer twenty-four (24) hours per day, six (6) days. It was Mondays to Fridays 7:00a.m. to 5:30pm with a separate rotation for weekend relief gatekeepers. The Ministry of Finance & the Public Service had not approved standby, on call or duty allowance for the gatekeepers. He stated that train delays were not regular. The gatekeepers were paid from the revenue received from the bauxite company. Any increase in the payment to flagmen and gatekeepers would have to come from the bauxite company. The bauxite company is not in a position to pay the increase.

During cross-examination he insisted that the amount of actual work per day for the gatekeepers was two (2) hours. When he was questioned by the Tribunal Members, he stated that the current job description for the gatekeepers was prepared during the 2008 reclassification.



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Glendon James Johnson testified in chief that he is the Human Resources Director of UC Rusal Alumina Jamaica Limited (Windalco). There is a user track arrangement which allows UC Rusal Alumina Jamaica Limited to use the railway track for a fee payable to the Jamaica Railway Corporation. As per the agreement the Company provides the services of gatekeepers and flagmen. The cost of paying the flagmen and gatekeepers was passed unto UC Rusal Alumina Jamaica Limited. At the moment UC Rusal Alumina Jamaica Limited has been experiencing over \$400,000,000.00 in losses since 2011. UC Rusal Alumina Jamaica Limited is unwilling to pay extra as it will be additional cost and the company is already struggling .

During cross-examination he stated that he knew that the cost of the gatemen and the flagmen was passed unto UC Rusal Alumina Jamaica Limited and if any maintenance of the track is required that fee is also passed back to UC Rusal Alumina Jamaica Limited.

In answer to questions put to him by the Tribunal Members, he stated the pass-through fees were different from the user track fees. The cost of the flagmen and the gatekeepers was a passthrough fee.

THE COMPANY'S CONTENTIONS:

1. There is no legal compulsion to pay overtime unless the employee earns minimum wage. The security guards are not minimum wage earners.
2. Security Guards are already paid a duty allowance for the purpose of the fact that they work in excess of forty hours per week.
3. It is the policy of Ministry of Financing & the Public Service not to make overtime payments to monthly paid employees in the public service. It is not reasonable for the Tribunal to compel the Company to act contrary to the well-established principle in the government service. In light of the foregoing no award should be made to the security guards.
4. The Gatekeeper's job is not a regular 9 to 5. They are not required to be at their base all the time. Given the nature of their job, to press the Company to pay overtime is unreasonable.



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5. The Company supplies just one customer (UC Rusal Alumina Jamaica Limited). That customer's business is not doing well. The cost of the gatekeepers is a passthrough to UC Rusal Alumina Jamaica Limited. That company is unwilling to be compelled to take up this additional charge, as its business is not doing well.
6. The Company is a limping entity. No award should be made to the gatekeepers.

THE TRIBUNAL'S FINDINGS AND RESPONSE:

In its deliberation, the Tribunal carefully considered the evidence submitted by both parties. It noted the following: -

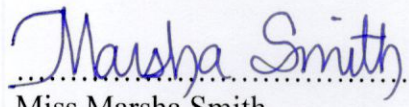
1. The Security Officers employed to the Company are currently being compensated for work done in excess of the normal forty (40) hour work week. This compensation is by way of a duty allowance which is in keeping with the policy of the Ministry of Finance & the Public Service. The current arrangement is to remain in place.
2. The current Ministry of Finance and Planning Job Description & Job Specification for gatekeepers and flagmen states that this category of worker is required to be on call six days per week, 24 hours per day including Public Holidays. This requirement shows that working hours per week exceed forty (40) hours. This job description was done during the reclassification exercise in 2008. In 2008 the Company had already ceased cargo and passenger service. The evidence before the Tribunal is that the only track user is the UC Rusal Alumina Jamaica Limited. Notwithstanding the job description, in practice the gatekeepers do not work six (6) days per week 24 hours per day. The regular train operation is from 7:00am. to 5:00 -5:30pm, Mondays to Fridays, with relief gatekeepers on weekends. This translates to 10 – 10 ½ hours per day or 50-52 ½ hours per week. An examination of both the Job description and the actual hours of the train operation shows that the gatekeepers are required to work in excess of forty (40) hours per week. At present the gatekeepers are not being compensated for work done in excess of the normal forty (40) hour work week. Therefore, the hours in excess of the normal forty (40) hour week should be compensated by way of a duty allowance.

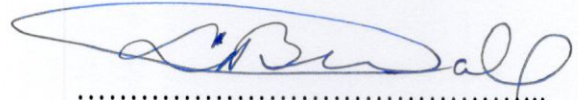


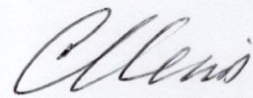
AWARD:

1. The Security Officers are currently being compensated for work done in excess of the normal forty (40) hour work week by way of a duty allowance. The current arrangement is to remain in place.
2. The Gatekeepers are to be compensated for work done in excess of the normal forty (40) hour work week by way of a duty allowance.

DATED THIS 3rd DAY OF AUGUST 2020


.....
Miss Marsha Smith
Chairman


.....
Mr. Leslie Hall, J.P.
Member


.....
Mr. Clinton Lewis
Member

Witness:


.....
Miss Phillippa Parkinson
Secretary to the Division

