

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 3/2018

SETTLEMENT OF DISPUTE

BETWEEN

**JAMAICA AIRCRAFT REFUELLING SERVICES
LIMITED**

AND

MR. LUTHER WILLIAMS

AWARD

I.D.T. DIVISION

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



MARCH 5 , 2020

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IDT 3/2018

INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
JAMAICA AIRCRAFT REFUELLING SERVICES LIMITED
(THE COMPANY)
AND
MR. LUTHER WILLIAMS
(THE AGGRIEVED)

REFERENCE:

By letter dated February 8, 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 Jamaica Aircraft Refuelling Services Limited on the one hand and Mr. Luther Williams 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:

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:

Ms. M. Angela Robertson	-	Attorney-at-Law
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The **Aggrieved Worker** was represented by:

Mr. Harold Brady	-	Industrial Relations Consultant
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In attendance was:

Mr. Luther Williams	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during twenty-two (22) sittings held between April 23, 2018 and May 9, 2019.

BACKGROUND TO DISPUTE:

Jamaica Aircraft Refuelling Services Limited (JARS) herein after called “the Company” is a Company with its registered office at 36 Trafalgar Road, Kingston 10 in the parish of Saint Andrew. The Company is a joint venture between Air BP and the Petroleum Corporation of Jamaica. Mr. Luther Williams, hereinafter called “the Aggrieved Worker” was employed to the Company from May 1, 2005 until June 20, 2016 as General Manager. On May 10, 2015 two employees of the Company (Messrs. Rayon Downer and Dave Morris) were implicated in the unauthorized removal of fuel from the Company’s property at the Sangster International Airport, Montego Bay in the parish of Saint James. The Aggrieved Worker was informed of the incident of May 11, 2015. The following day he met with Messrs Downer and Morris and later that day



told them that they had the option of resigning or being fired. The two men resigned. However, prior to their resignations the Aggrieved Worker did not obtain reports from either man as it related to the unauthorised removal of the Company fuel on May 10, 2015. The Company then embarked on an investigation of the incident. As a part of the investigations, the Company's Board of Directors requested a report from the Aggrieved Worker. He submitted a report in which he stated that there was no loss of fuel from the Company and that the issue of seeking to prosecute the ex-employee should be discontinued. The Board was not satisfied with the report and requested a further report from the Aggrieved Worker, and he submitted this further report dated July 6, 2015. In the second report he stated that the company lost product and recommended further investigations with a prosecutorial objective. During the Company's investigations the Aggrieved Worker was sent on suspension. By way of letter dated December 18, 2015 the Aggrieved Worker was charged with disciplinary breaches resulting from the investigation. The charges are set out.

- "1. Without reasonable and proper cause you have conducted yourself in a manner calculated and likely to destroy and/or seriously damage the relationship of confidence and trust between employer and employee as demonstrated inter alia by*
- i. The manner in which you handled the investigations of the incident on 10th May 2015 which as General Manager you would have been required to undertake; further contrary to normal disciplinary procedures you failed and/or refused to obtain a proper report of the incident from Messrs. Rayon Downer and Dave Morris.*
 - ii. The discrepancy in the positions outlined by you in the two Board Reports was cause for grave concern as the first Report that there was no loss and therefore no need to pursue the matter was different from the second which indicated that there was in fact a loss and recommended criminal prosecution both being derived from the same information which was available at the time of the first Report was produced.*
 - iii. Your failure and/or refusal to cooperate with the authorities i.e. in giving a statement in a timely manner has affected the necessary trust and*



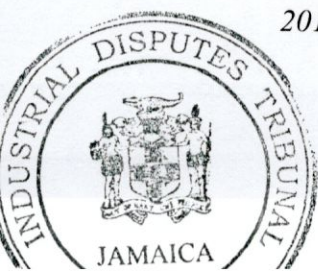
confidence inter alia for the continued working relationship between JARS, the Police and Customs

- iv. *Your evasive or non-responses to the questions posed by the Board*
 - v. *The use of a Haulage Contractor, Deans Valley which was not registered under the Petroleum (Quality Control) Act as the tender specified requirements for registration resulted in concerns that the process lacked the required transparency. In addition, JARS having contracted with an entity which did not satisfy the legal requirement to hold a haulage licence demonstrated a total lack of due diligence on your part.*
 - vi. *The non-implementation of the Audit Recommendations.*
2. *Serious negligence, including but not limited to your ineffective management and oversight of the JARS inventory portfolio, which caused or might cause unacceptable loss, damage or injury to JARS. The undermentioned are some examples:*
- i. *Poor audit results from airlines which could result in potential loss of business;*
 - ii. *Inventory management and reconciliation only done by you.*
 - iii. *No security structure for the IT infrastructure in Montego Bay.*
 - vi. *The accumulation of over one hundred days' vacation leave by the Supervisor in circumstances where the liability of the company is payment at the rate in existence at the date of payment and not the date the leave was earned.*
 - v. *Allowing the Supervisor to advance on the company's behalf his personal monies for everyday company expenses and further allowing such sums to be outstanding for a prolonged period without being repaid.*
 - vi. *The lack of sufficient direction, supervision and control of the operations at SIA from you as General Manager which resulted in loss to JARS.*



vii *Providing information to the Board of Directors of JARS relating to the inventory balance and thereafter there was a write off of over US\$500,000.00 which is in excess of J\$60,000,000.00 in circumstances where this level of write off was not reflected in the monthly JARS Management Accounts nor was the Board apprised by you of the potential of such a significant loss. The above was an issue of grave concern for the Board. The figure for inventory losses which was recorded in the December 2014 Management Accounts was US\$1,618,521.10, however the audited results was materially different and reflected a balance of US\$1,179,924.10.*

3. *You have failed to perform your job duties and obligations in a manner which is compatible with faithful discharge of your duties as the General Manager of the Company generally and specifically as it relates to the incident of May 10, 2015 as is demonstrated by the findings of the Report conducted by IAD and as demonstrated by the answers that you gave generally to the questions posed by the Board but specifically to questions 1, 3, 4, 7, 8, 9, 10, 11, 14, 16, 17, 18, 19, 20, 24, 25, 27, 28, 32, 35, 36, 41, 42, 44 and 51.*
4. *In your capacity as General Manager of JARS you owe to your employer an implied duty of care in carrying out your job functions and in this regard, you did not demonstrate the same by your failure to obtain proper and/or any statement from Messrs. Downer and Morris. Further, by your failure to co-operate with the authorities and provide your statement to them in a timely manner and your failure to properly oversee the Company's operations at SIA as highlighted by the conclusions arrived at in the security investigations conducted by Lance Boyer and Garrett Petraia and set out in the summary of "Thefts that incurred at Montego Bay Jamaica Sangster Airport on May 10, 2015."*
5. *As the General Manager of JARS any act which is inconsistent with the terms of your contract of employment express or implied, and which is injurious to your employer and its interest, will amount to a breach of the duty of faithful service. This is demonstrated inter alia by your actions or lack thereof after the incident on 10th May 2015 as demonstrated inter alia by the IAD report, your first Report to the Board and*



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your failure to report to the Board in timely manner the level of inventory losses as set out above."

The Aggrieved Worker was accompanied by his Attorney-at-Law at a disciplinary hearing conducted between February 8, 2016 and March 17, 2016. Save and except for charges 1(vi), 2(iv), 2(v) and 3 which related to the non-implementation of Audit recommendations, the disciplinary panel found the Aggrieved guilty of the remaining charges. By way of letter dated June 20, 2016, the Company terminated the employment of the Aggrieved Worker. The Aggrieved Worker appealed the decision of terminating his employment by way of letter dated June 28, 2016, which set out twelve (12) grounds of appeal. The appeal hearing was conducted between August 12, 2016 and February 18, 2017. The appeal panel issued its finding on May 29, 2017. The appeal panel upheld a part of Ground # 5 and Ground #11. The other grounds of appeal were rejected.

The Aggrieved Worker referred the matter of the termination of his employment to the Ministry of Labour and Social Security. The Minister referred the matter to the Industrial Disputes Tribunal for determination and settlement

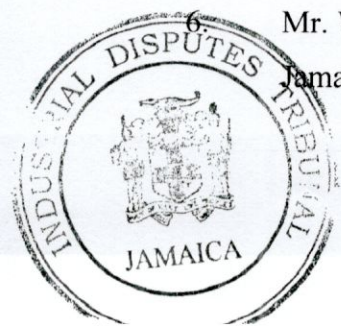
THE COMPANY'S CASE:

1. The Company first witness was Mr. Winston Spencer Ormsby, Consultant Engineer and Project Manager. He testified that he and Mrs Lisa Soares chaired the disciplinary panel that conducted the hearing in relation to charges brought against the Aggrieved Worker by way of letter dated December 18, 2015. Mr. Ormsby said he was given the charge letter and the documents mentioned in the charge letter prior to the commencement of the hearing. The panel read each item in the charge letter to the Aggrieved Worker and asked him if he had any evidence or supporting documentation that could refute or negate the charges. The Aggrieved Worker was given ample opportunity to respond to the allegations. Mr. Ormsby said that on several occasions the Aggrieved Worker was invited by the panel to provide an explanation or evidence to negate charges laid against him. On none of those occasions did the Aggrieved provide any evidence or an explanation. The panel produced a report on what took place at the hearing. At the Tribunal, Mr. Ormsby

was shown the report of the appeal panel and he agreed with all the findings save and except the two in favour of the Aggrieved Worker.

2. During cross-examination he said he did not play any role in the termination of the Aggrieved Worker. He was a member of the disciplinary panel that submitted a report to the Company but had nothing further to do with the matter after his report.
3. Mrs. Ashley Malcolm, the Group Internal Auditor at Petroleum Corporation of Jamaica (PCJ) was the Company's second witness. She testified that she was familiar with the incident on May 10, 2015, involving the Company's employees. She had a meeting with the Group General Manager, relating to the incident involving loss of fuel and he asked her to look at the incident and provide a report. The report was done by herself and Major Phillip Campbell. She gave evidence of how the investigation was done in order to prepare the report which was submitted to the PCJ Board.
4. During cross-examination she said that the first disciplinary panel constituted to hear the charges against the Aggrieved Worker was aborted on the objection of the Aggrieved Worker and his Attorney-at-Law. The new panel was jointly chaired by Mr. Winston Ormsby and Mrs. Lisa Soares with Mr. Kirk Johnson participating to marshal the evidence. She stated that the Aggrieved Worker was not implicated in any theft. She was asked questions in relation to the tank farm operations in Montego Bay managed by Total, GB Energy and the Company. She said that the Company lost product on May 10, 2015.
5. Major Phillip Charles Campbell, security advisor at Petrojam was the Company's third witness. In May 2015 he attended a meeting with the Group General Manager of Petroleum Corporation of Jamaica, Mr. Winston Watson, the Commissioner of Customs and his team and Mrs. Ashlyn Malcolm to discuss concerns about the event on May 10, 2015. He and Mrs. Malcolm were asked to investigate the situation. He gave evidence of what he did in undertaking the assignment of preparing the report. He had no further involvement in the matter after his report. During cross-examination he was asked several questions relating to the persons he interviewed and documents he examined during his investigations.

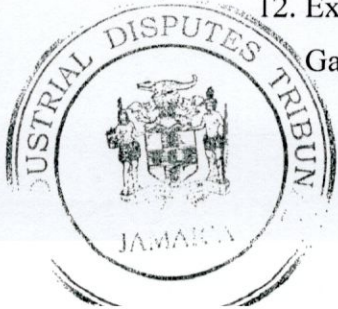
6. Mr. Winston Watson, the former Group General Manager at Petroleum Corporation of Jamaica was the Company's fourth witness. He said he was familiar with the incident of



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May 10, 2015, involving loss of fuel from the Company. The Aggrieved Worker, the Company's General Manager was asked to prepare a report and to provide answers to a Question & Answer (Q&A) document by the Company's Board of Directors. There was an investigation, which was followed by a disciplinary hearing held to hear the Aggrieved Worker's case. The disciplinary panel was chaired by Mr. Winston Ormsby and Mrs. Lisa Soares. Mr. Watson said he was present at the hearing a couple of times, but he was not a member of the panel hearing the matter. He received a report after the disciplinary hearing as he was also a member of the Company's board at the time. The report was discussed at a board meeting. The board then took the decision to terminate the Aggrieved Worker's employment based on the report of the disciplinary panel. During cross-examination he said that he wrote to the Aggrieved Worker sending him off on leave, while the investigations were taking place.

7. During the Company's case the following documents were admitted as Exhibits.
 1. Exhibit 1 – Letter advising the Aggrieved Worker of the disciplinary hearing dated December 18, 2015.
 2. Exhibit 2 – Letter of termination dated June 20, 2016
 3. Exhibit 3 – The Notice and Grounds of Appeal dated June 27, 2016
 4. Exhibit 4 – The Findings of the Appeal Panel
 5. Exhibit 5 – Notes of Evidence of the Disciplinary Hearing
 6. Exhibit 6 – The Report of the Disciplinary Panel
 7. Exhibit 7 – Final Internal Audit Report for JARS dated April 2014
 8. Exhibit 8a – Undated Employees Investigative Report prepared by the Aggrieved Worker
 9. Exhibit 8b – Investigative Report on the Theft of Product by Jamaica Aircraft Refuelling Services Employee -MBJ Operations dated July 6, 2015 prepared by the Aggrieved Worker
 10. Exhibit 9a – Letter to the Aggrieved Worker dated June 25, 2015 enclosing questionnaire
 11. Exhibit 9b – Response to Questionnaire prepared by the Aggrieved Worker
 12. Exhibit 10 – Group Security report dated June 11, 2015 prepared by Lance Boyer and Garrett Petraia



13. Exhibit 11 – Report on the Theft of Fuel from Jamaica Aircraft Refuelling Services Limited (JARS) prepared by Major Phillip Campbell and Ashlyn Malcolm dated August 28, 2015
14. Exhibit 12 – Copy Total Jamaica Limited Product Receipt Delivery Slips #18344 and #18326
15. Exhibit 13- Memo from Major Phillip C. Campbell to Winston L. Watson dated August 24, 2015.

THE COMPANY'S CONTENTIONS:

The Company's main contentions were that its actions were fair and in keeping with its obligations under Section 22 of the Labour Relations Code. The Aggrieved Worker was allowed a disciplinary hearing so that his case could be heard; the issues/charges were put to him in writing; he was represented, and he was allowed an appeal.

THE AGGRIEVED WORKER'S CASE:

The Aggrieved Worker did not testify and called no witnesses.

THE AGGRIEVED WORKER'S CONTENTIONS:

The main contentions of the Aggrieved Worker were that: -

1. The Company failed and/or refused to present any evidence or called any witnesses at the disciplinary hearing but nevertheless made a finding that the company had lost trust and confidence in the Aggrieved in the performance of his duties.
2. The onus rests on the employer to prove that the dismissal was not unlawful, not unfair and or unjustifiable. Where on the presentation of the employer's case it can be established that the employer has failed to discharge the onus of substantiating the dismissal was not unlawful, not unfair and/or not unjustifiable, the employee may choose not to call any witnesses.
3. The Company failed and/or refused to present to the disciplinary panel, the appeal panel and the IDT, the terms and conditions of employment and scope, duties and responsibilities of the Aggrieved Worker in his capacity as General Manager of JARS.
4. The company did not attend and give evidence at the disciplinary hearing.



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5. The Aggrieved Worker should be reinstated.

THE TRIBUNAL FINDINGS:

1. The Aggrieved Worker received a charge letter and the documents on which the company relied on in support of the charges.
2. The Aggrieved Worker was given a disciplinary hearing and was accompanied by his Attorney-at-Law at the hearing.
3. The Aggrieved Worker was given an opportunity to present his case.
4. The Aggrieved Worker's employment was terminated by the Company after it received the report of the Disciplinary panel.
5. The Aggrieved Worker was granted an appeal and filed twelve (12) grounds of appeal
6. The Appeal panel upheld two (2) grounds of appeal in part and rejected the remaining ten (10) grounds.
7. The evidence presented shows that there was a basis for the charges being brought against the Aggrieved Worker and also that the charges were made out at the disciplinary hearing.

THE TRIBUNAL RESPONSE:

1. The evidence presented at the Tribunal shows that the way the Company terminated the Aggrieved Worker's employment was in conformity with the requirements of Section 22 of the Labour Relations Code which deals with discipline.
2. The appeal, though successful in part did not exonerate the Aggrieved Worker. Majority of the findings of the disciplinary panel were undisturbed.
3. Considering the foregoing the Tribunal concludes that the termination of the Aggrieved Worker's employment was justifiable.



AWARD:

In accordance with Section 12 of the Labour Relations and Industrial Disputes Act the Tribunal awards that termination of the employment of Mr. Luther Williams was justifiable.

DATED THIS 5th DAY OF MARCH 2020



Witness:

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Mr. Gary Lediard
Secretary to the Division

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Marsha Smith
Ms. Marsha Smith
Chairman

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

.....
Clinton Lewis
Mr. Clinton Lewis
Member