

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 16/2019

SETTLEMENT OF DISPUTE

BETWEEN

JAMAICA PUBLIC SERVICE COMPANY LIMITED

AND

UNION OF CLERICAL, ADMINISTRATIVE &
SUPERVISORY EMPLOYEES

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	CHAIRMAN
MR. ERROL BECKFORD	-	MEMBER
MRS. CHELSIE SHELLIE-VERNON	-	MEMBER

NOVEMBER 20, 2020

IDT 16/2019

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

JAMAICA PUBLIC SERVICE COMPANY LIMITED

(THE COMPANY)

AND

UNION OF CLERICAL, ADMINISTRATIVE & SUPERVISORY EMPLOYEES

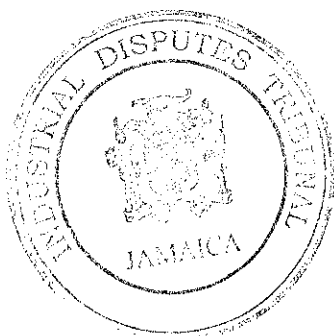
(THE UNION)

REFERENCE:

By letter dated May 6, 2019 the Honourable Minister of Labour and Social Security, in accordance with Section 9(3) of the Labour Relations and Industrial Disputes Act of 1975 (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:

"To determine and settle the dispute between Jamaica Public Service Company Limited on the one hand, and the Union of Clerical, Administrative & Supervisory Employees on the other hand, over the Union's claim for Increased Wages and improved fringe benefits for the period January 1, 2018 to December 31, 2019."



DIVISION:

The Division of the Tribunal which was selected in accordance with Section 8(2) (c) of the Act to hear the matter comprised:

- Mr. Charles Jones, CD, JP - Chairman
- Mr. Errol Beckford - Member, Section 8(2) (c) (ii)
- Mrs. Chelsie Shellie-Vernon - Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- Ms. Angela Robertson - Attorney-at-Law
- Ms. Kimberly Morris - Attorney-at-Law

In attendance were:

- Mr. Vaughn McDonald - Manager Employee Relations
- Mrs. Tania McDonald-Tomlinson - Director, Recruitment & Employee Services

The **Union** was represented by:

- Mr. John Levy - General Secretary
- Mr. Robert Harris - Industrial Relations Consultant

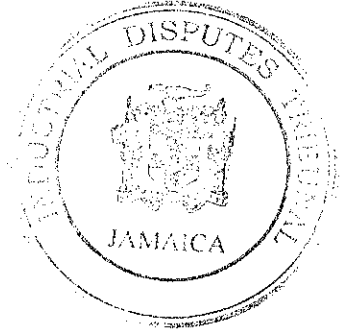
In attendance were:

- Mr. Markland Brown - Chief Delegate, Technical & Admin. Group
- Miss Andrea Thomas - Chief Delegate, Executive Assistants Group
- Mr. Mark Chambers - Delegate
- Mr. Albert Henry - Delegate
- Other delegates

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties and oral submissions made during thirty-five (35) sittings held between May 21, 2019 and March 19, 2020.

The original Division of the Tribunal which was selected in accordance with Section 8(2) (c) of the Act to hear the matter comprised:

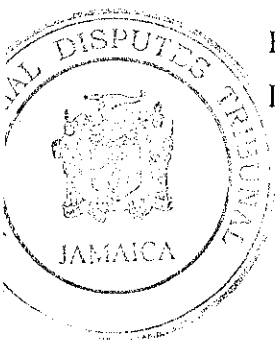


Mr. Charles Jones, CD, JP	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2) (c) (ii)
Mr. Trevor D McNish	-	Member, Section 8(2) (c) (iii)

After four sittings were held Mr. Trevor McNish became ill and subsequently died. In accordance with Section 8(4) of the Labour Relations and Industrial Disputes Act, the parties agreed in writing for Mrs. Chelsie Shellie-Vernon to be appointed to the Division to replace Mr. McNish.

BACKGROUND TO THE DISPUTE:

1. The Jamaica Public Service Company Limited (the Company) is an integrated electric utility company and the sole distributor of electricity in Jamaica. The Company is engaged in the generation, transmission and distribution of electricity to consumers in Jamaica. The Company is incorporated under the Companies Act of Jamaica with its registered office at 6 Knutsford Boulevard, Kingston 5.
2. The Union of Clerical Administrative and Supervisory Employees (the Union) is registered under the Trade Union Act of Jamaica with its registered office at 7 Tangerine Place, Kingston 10. The Union represents two (2) Bargaining Units, one for the Technical and Administrative Group and the other for the Executive Assistants Group. The Union submitted 25 point claims for both groups for the period January 1, 2018 to December 31, 2019. Clarification meetings were held between both parties.
3. On October 8, 2018, the Ministry of Labour and Social Security invited the Union to a meeting as there was reason to believe that some form of industrial action was taking place. On October 9, 2018, a back-to-work agreement was reached and normality was restored. A number of negotiation meetings were held at the local level, and the Ministry of Labour and Social Security again had to intervene to restore normality. Discussions at the local level continued, but without success. On May 6, 2019, the members of the Bargaining Units took industrial action and the matter was referred to the Industrial Disputes Tribunal (IDT) by the Honourable Minister of Labour and Social Security.



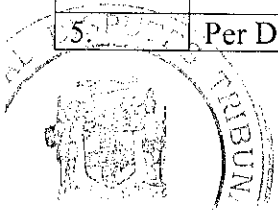
4. An order to cease industrial action was issued by the Industrial Disputes Tribunal on May 7, 2019.

THE UNION'S CASE:

5. Mr. John Levy, General Secretary of the Union representing the workers, in his opening address, stated that the issue was of national importance. The matter concerned a new wage and fringe benefits contract which had been outstanding from January 1, 2018. He said that this meant that the staff had been exposed to an inflationary impact for goods and services.
6. Mr. Levy explained that the Union represented two (2) bargaining units and gave a chronology of events as to why the matter had not been concluded after 8-9 months of negotiations. He stated that the items of claim were listed in the Union's Brief and that the core items were salary, clothing allowance, motor vehicle allowances and meal allowance. He drew attention to the fact that the items meal allowance and removal expenses had been agreed.
7. The items of claim are set out below:

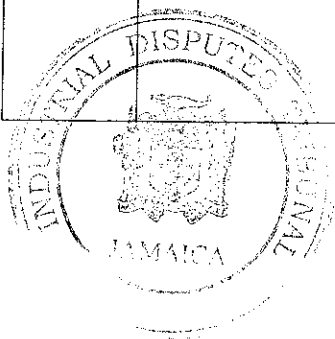
Technical and Administrative Group

Number of items	Claim items	UCASE's Position January 1, 2018 - December 31, 2019
1.	Duration of Contract	This agreement shall be for a period of two (2) years commencing January 1, 2018 and terminating on December 31, 2019
2.	Taxable Basic Salary	Year 1-10% Year 2-10%
3.	Collective Labour Agreement	Finalization of the Collective Labour Agreement (CLA) within two (2) months after the signing of this agreement on or before October 9, 2018
4.	Clothing Allowance	Year 1-\$150,000 Year 2-\$175,000
5.	Per Diem	Year 1-\$7,000

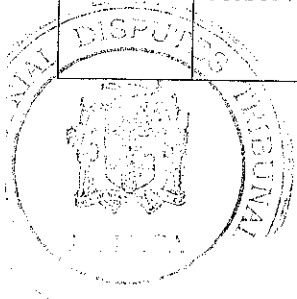


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		Year 2-\$8,500							
6.	Meal Allowance	Year 1-\$1,250 Year 2-\$1,500							
7.	Lunch Subsidy	Year 1- \$1,000 Year 2- \$1,200							
8. a.	Motor Vehicle Upkeep 4x4 vehicles	Year 1-\$120,000 Year 2-\$135,000							
b.	Grade 8-10 and Travelling Officers	Year 1-\$100,000 Year 2-\$115,000							
c.	Grade 1-7 and Non-Travelling Officers	Year 1-\$70,000 Year 2-\$85,000							
9. a.	Mileage – Two-part East Rate } 30% differential West Rate }	<table border="1"> <thead> <tr> <th>East</th> <th>West</th> </tr> </thead> <tbody> <tr> <td>Year 1-\$100.00</td> <td>Year 1-\$130.00</td> </tr> <tr> <td>Year 2-\$130.00</td> <td>Year 2-\$170.00</td> </tr> </tbody> </table>	East	West	Year 1-\$100.00	Year 1-\$130.00	Year 2-\$130.00	Year 2-\$170.00	<div style="border: 1px solid black; padding: 5px;"> <p>East and Central Region- St Thomas, Kingston. St Andrew, St Catherine and Clarendon</p> <p>West, North and South Region-St Mary, Portland, St Ann, Trelawny, St James,</p> <p>Manchester</p> </div>
East	West								
Year 1-\$100.00	Year 1-\$130.00								
Year 2-\$130.00	Year 2-\$170.00								
b.	Flat Rate (<i>where no upkeep is paid</i>)	<table border="1"> <tbody> <tr> <td>Year 1-\$110.00</td> <td>Year 1-\$143.00</td> </tr> <tr> <td>Year 2-\$140.00</td> <td>Year 2-\$182.00</td> </tr> </tbody> </table>	Year 1-\$110.00	Year 1-\$143.00	Year 2-\$140.00	Year 2-\$182.00			
Year 1-\$110.00	Year 1-\$143.00								
Year 2-\$140.00	Year 2-\$182.00								
c.	Passenger Mile (<i>for the duration of the contract</i>)	<p>East -\$20 per mile West-\$26 per mile Hanover, Westmoreland St Elizabeth and</p>							
10.	Transportation Allowance	Year 1-\$50,000 Year 2-\$60,000							
11.	Vacation Allowance	<p>Employees with 25 years of service and over:</p> <p>Grade 4-10 Year 1-\$160,000 Year 2-\$180,000</p> <p>Grade 3 Year 1-\$125,000 Year 2-\$150,000</p> <p>Grade 1-2 Year 1-\$100,000 Year 2-\$120,000</p>							



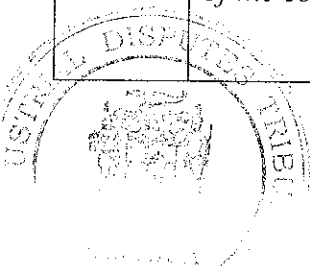
12.	Taxi fare (maximum mileage for which taxi fare is payable is 25 miles)	East Year 1-\$320/\$100/\$1,500 Year 2-\$350/\$130/\$1,800	West Year1-\$416/\$130/\$1,950 Year2-\$445/\$169/\$2,340
13.	Sunday Premium (per Sunday worked)	Year 1-\$4,000 Year 2-\$5,000	
14.	On-Call allowance	Year 1-\$30,000.00 per month Year 2-\$36,000.00 per month	
15.	On-Call/Special Allowance	Year1-\$30,000.00 Year2-\$36,000.00	
16.	Electricity	To be extended to persons with 20 years or more service on separation from the Company save and except dismissal	
17.	Removal Assistance	\$40,000.00 for two (2) years	
18.	Shift Premium	8%	
19.	Housing for Employees	Special Committee (including representatives from all Bargaining Units within the Company) to be formed in 2018 to explore the development of the programme	
20.	Renewable Allowance	Year 1-20% Year 2-15%	
21.	Other Benefits	<ul style="list-style-type: none"> • Conversion of Pension Scheme from Defined Contribution to Defined benefit for all members of the bargaining unit New Employees <ul style="list-style-type: none"> • New Terms and Conditions 2014 to be reviewed • Health Insurance scheme-to be extended to retirees and persons with twenty (20) years or more years' service who leave the Company. 	
22.	Loss of Jobs	There shall be no loss of jobs for the duration of the contract.	
23.	Parental Duty Leave	Five (5) days parental duty leave to be provided for parents with infant children.	
24.	General	All other benefits and allowances that are not mentioned above shall remain.	
25.	Reserve Clause	The Union reserves the right to submit additional claims at a later date or at our first meeting during the negotiation.	



Executive Assistants Group

Number of items	Claim items	UCASE's Position January 1, 2018 - December 31, 2019	
1.	Duration of Contract	This agreement shall be for a period of two (2) years commencing January 1, 2018 and terminating on December 31, 2019	
2.	Taxable Basic Salary	Year 1-10% Year 2-10%	
3.	Collective Labour Agreement	Finalization of the Collective Labour Agreement (CLA) within two (2) months after the signing of this agreement on or before October 9, 2018	
4.	Clothing Allowance	Year 1-\$150,000 Year 2-\$175,000	
5.	Per Diem	Year 1-\$7,000 Year 2-\$8,500	
6.	Meal Allowance	Year 1-\$1,250 Year 2-\$1,500	
7.	Lunch Subsidy	Year 1- \$1,000 Year 2- \$1,200	
8.	Motor Vehicle Upkeep 4x4 vehicles	Year 1-\$110,000 Year 2-\$121,000	
9.	Incentive Programme	This item is to be finalized by May 31, 2018 covering the period from 2013 which was already agreed	
10. a.	Mileage-Two-part East Rate 30% differential West Rate	East West Year 1-\$100.00 Year 2-\$130.00	Year 1- \$130 Year 2-\$170
b.	Flat Rate (where no upkeep is paid)	Year 1 -\$110.00 Year 1-\$140.00 West, North and South	Year 1-\$143.00 Year 1-\$182.00
c.	Passenger Mile (for the duration of the contract)	East -\$20 per mile Trelawny, St James, West-\$26 per mile Hanover, Westmoreland, St Elizabeth and Manchester	

East and Central Region- St Thomas, Kingston. St Andrew, St Catherine and Clarendon Region-St Mary, Portland, St Ann,
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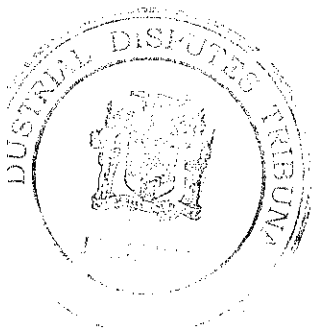


11.	Transportation Allowance	Year 1-\$60,000 Year 2-\$66,000						
12.	Vacation Allowance	Year 1-\$170,000 Year 2-\$187,000						
13.	Taxi fare (maximum mileage for which taxi fare is payable is 25 miles)	<table border="0"> <tr> <td>East</td> <td>West</td> </tr> <tr> <td>Year 1-\$320/\$100/\$1,500</td> <td>Year 1-\$416/\$130/\$1,950</td> </tr> <tr> <td>Year 2-\$350/\$130/\$1,800</td> <td>Year 2-\$445/\$169/\$2,340</td> </tr> </table>	East	West	Year 1-\$320/\$100/\$1,500	Year 1-\$416/\$130/\$1,950	Year 2-\$350/\$130/\$1,800	Year 2-\$445/\$169/\$2,340
East	West							
Year 1-\$320/\$100/\$1,500	Year 1-\$416/\$130/\$1,950							
Year 2-\$350/\$130/\$1,800	Year 2-\$445/\$169/\$2,340							
14.	Sunday Premium (per Sunday worked)	Year 1-\$4,000 Year 2-\$5,000						
15.	On-Call Allowance	Year 1-\$30,000.00 per month Year 2-\$36,000.00 per month						
16.	On-Call/Special Allowance	Year 1-\$30,000.00 Year 2-\$36,000.00						
17.	Electricity	To be extended to persons with 20 years or more service on separation from the Company, save and except dismissal						
18.	Removal Assistance	\$40,000.00 for two (2) years						
19.	Housing for Employees	Special Committee (including representatives from all Bargaining Units within the Company) to be formed in 2018 to explore the development of the programme						
20.	Other Benefits	<ul style="list-style-type: none"> • Conversion of Pension Scheme from Defined Contribution to Defined Benefits for all members of the bargaining unit New Employees <ul style="list-style-type: none"> • New Terms and Conditions 2013 to be reviewed • Health Insurance scheme to be extended to retirees and persons with twenty (20) or more years' service who leave the Company. 						
21.	Loss of Jobs	There shall be no loss of jobs for the duration of the contract.						
22.	Parental Duty Leave	Five (5) days parental duty leave to be provided for parents with infant children.						
23.	Paternity Leave	Five (5) days paternity leave on the birth of each child up to a maximum of three (3) children.						
24.	General	All other benefits and allowances that are not mentioned above shall remain.						



25.	Reserve Clause	The Union reserves the right to submit additional claims at a later date or at our first meeting during the negotiation.
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8. In continuing his presentation Mr. Levy highlighted all the factors that the Union had considered in determining the claim, which he said were reasonable, based on their assessment of the Company's ability to pay. The Union's information was that the Company had made its largest profit in a decade and that its bad debt portfolio had reduced considerably.
9. The Union's negotiations of the increases for years 2018 and 2019 were guided by the 2017 and 2018 inflation rates.
10. He stated that the Company's decision to end the arrangement where employees were compensated for unused accumulated sick leave should not be a factor in the Tribunal's deliberation, as that benefit did not apply to Executive Assistants as they were not eligible.
11. He further contended as follows:
 - a. The Company had the financial space and capability to honour the claim made by the Union.
 - b. The licensing regime under the OUR regulation allowed for annual adjustments based on the inflation rates in Jamaica and the USA together with any foreign exchange rate adjustment that might be necessary.
 - c. The government had paid the Company over Nine Billion Dollars in outstanding bills
 - d. There was a consistent crawling peg rate increase to [cover] the cost of electricity. This allowed the Company to constantly protect itself from any negative events that may occur.
 - e. The overall efficiency and output of the Company had improved consistently and considerably.
 - f. The financial health of the Company had been on an upward trajectory for the past number of years, culminating with its greatest profit declared for the January to December 2018 financial year.

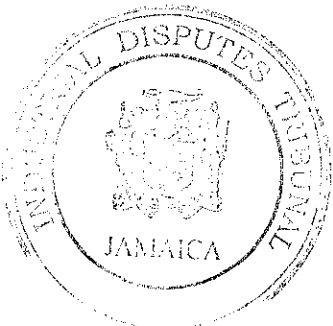


g. The Company had seen tremendous industrial relation stability over the last ten years along with the excellent performance of the staff.

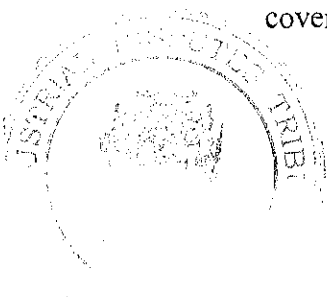
12. Mr. John Levy called Miss Andrea Thomas, Executive Assistant and Chief Union Delegate for the Executive Assistants Bargaining Unit, as his first witness. Miss Thomas testified as follows:

- The Executive Assistants Group became unionized on or about 2007-2008
- In addition to basic salary, Executive Assistants were paid motor vehicle upkeep allowance or a transportation allowance and yearly allowances for clothing and vacation.
- Over the past eighteen (18) months there had been a reduction in her purchasing power and she was unable to cope with all the expenses such as, food, fuel, motor car repairs, and toll charges.
- Prior to joining the Union in 2008 Executive Assistants, on leaving the Company - whether by redundancy or voluntarily - that employee would be compensated for all unused sick leave accumulated over the years. Executive Assistants no longer had the facility for payment of unused sick leave as that was removed in 2006.
- Before joining the Union, Executive Assistants were part of an incentive programme which ceased on their joining the Union. They had, however, received a settlement for performance assessment for the period 2014-2016 after the intervention of the Union.
- The Company at first offered a salary of 3%, 3% and 3% over a three (3) year basis 2018-2020, whereas the Union's claim was for 10% for each year.
- The Company made an offer of 4%, 5% and 6% to the Clerical, Administrative and Supervisory staff for the 3-year period, which included negotiations to eliminate payment for sick leave. The offer to the Executive Assistants remained at 3%, 3% and 3%.

13. During cross examination, Miss Thomas was reminded that the buyout of sick leave for Executive Assistants became effective on 4th October 2005. Following questioning she agreed that she had accumulated sick leave up to September 30, 2005, for which she would have been paid, should she have retired, made redundant or her contract terminated voluntarily or involuntarily.



14. During further cross examination, Miss Thomas admitted that she was paid salary in lieu of sick leave up to a certain date despite her not being aware of making any request for payment. The payment received was outlined in a letter dated September 30, 2005, but she was unable to recall the date of payment.
15. Miss Thomas also testified that persons in the Executive Assistants Group were not entitled to payment for unused sick leave. Consequently, any reference to sick leave dollar value being an issue with this group would not be correct.
16. Miss Thomas, in response to a question by a Member of the Tribunal, explained that Executive Assistants were non-unionized up to September 2005. She explained that at that time they had signed a new contract of employment which included changes to their terms of employment. One such change was that they would no longer be paid for unused sick leave.
17. Mr. Levy then called Mr. Markland Brown, Technical Engineer and Chief Union Delegate for the Technical & Administrative Staff as his second witness. Mr. Brown testified as follows:
- He had been the chief delegate on behalf of the Technical & Administrative Group for over a year and was aware of the claim served by the Union.
 - The Company had a guaranteed revenue stream based on the licence under which it operated.
 - In the preparation of the claim the matrix used by the Union consisted of the following components:
 - i. the cost of living adjustment for the previous year
 - ii. the productivity of members and the profitability of the Company
 - iii. The impact that taxation would have on the requested increase
18. In his continuing testimony Mr. Brown stated that -
- The Company's finances would be affected by the wage claim, but the Company could at the end of the year make a submission to the OUR for a rate adjustment that would cover known and measurable costs and leave a surplus.



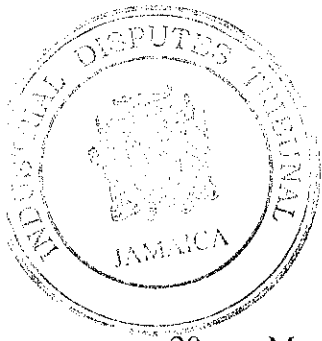
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- The non-technical loss of Nine Billion Dollars which represented 18% of overall losses was shared between the Government (11.37%) and the Company (6.63%), so it would be unfair for non-technical losses to be used as the basis to prevent a salary increase as there were special mechanisms to deal with this.
- He did not agree that the Company was facing one of its worst financing periods as the Company had exceeded its projected net profit and had shown profits in the years under review.
- The Company was able to restructure its loan portfolio, thereby enjoying significantly reduced interest rates.
- In addition, Government had paid \$9.3B Dollars to JPS that was owed for streetlighting.
- One of the challenges facing the Company in meeting the Union's request would be the liability in respect of payment of unused sick leave. This liability had arisen as the Company in an effort to deal with absenteeism due to illness had instituted a scheme to allow employees to accumulate unused sick leave and to be paid for this leave on separation from the Company, at their current rate of pay. The Company had proposed to the Union to eliminate this benefit.
- Mr. Brown, in his continuing evidence, expanded on the assumptions made in the Claims submitted which were carefully documented in the Verbatim Notes. He stated that it was the custom and practice for claims submitted to cover a two-year period.
- The claims were determined in keeping with the matrix used and that with respect to motor vehicle and travelling allowances, the factors that guided the consideration included maintenance costs, motor vehicle loan repayments, insurance and the cost of fuel and petroleum products.

19. Mr. Brown was then questioned on the financial statements presented for the years 2016, 2017 and 2018 which were extracts from the Company's Annual reports for those three years admitted as Exhibits 11, 12 and 13 respectively. He summarised his responses as follows:

"... What we are looking on here, if we look to December 31, 2016 and go to your left across to December 31, 2018 you would observe a reduction in the numbers. This would suggest that ... well, broadly speaking, we are getting more efficient





but it could be as a result of the newer plant being introduced, new equipment, renewables that are more coming on to overall, in price, so it shows an improvement in our efficiency.”

20. Mr. Brown was then asked to comment on a statement outlined by the Company in its brief read:

“... The Company is currently facing one of the worst financial periods it has for sometime. It is therefore not feasible to expect that it would be able to increase salaries beyond a limit, which it financially can afford...”

21. Mr. Brown in answer stated that the profit of the Company as reflected on the financial statements was over US\$24 Million in 2016, US\$24.5 Million in 2017 and US\$31 Million in 2018. He continued by saying that what he had gleaned was:

“..... the Company is on an upward trajectory with regards to their profit and also that compared with the previous year, 2018 definitely would not have been the worst year.”

“...this performance by the Company going by the audited financials..... definitely and absolutely supports the Union’s claim for an improvement at the levels requested.”

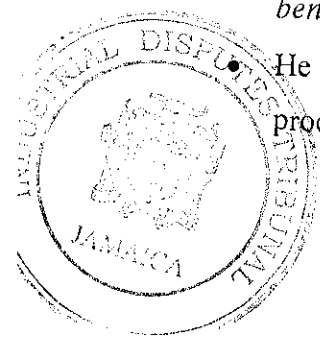
22. Ms. Robertson, Attorney-at-law for the Company then cross examined Mr. Brown, who stated that he still held the post of Technician Engineer in the System Protection and Control Department which provided protection for the network in the generation, transmission and distribution of electricity.

23. He then answered questions and confirmed the percentage increases being requested on the items of claim for the two (2) year period. These increases ranged from a low of 8% for shift premium and 20% for salary, and a high of 158% on lunch subsidy.

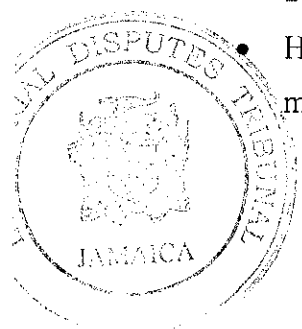
24. In the continuing cross examination Mr. Brown testified as follows:

- The duration of the contract period was 2 years, but that during negotiations the Company had indicated a preference for a 3-year contract period
- The Company and the Union in the past had entered into 3-year contracts.

- He agreed that eighteen (18) of the items of claim had direct cost implications for the Company and that the cost of overtime would be impacted by any increases granted
 - He agreed that basic salary was not the only item that was paid to members of the group on a consistent basis.
25. Ms. Robertson invited Mr. Brown's attention to the evidence given in examination in chief regarding the deal with Sagicor Bank Jamaica Limited. She enquired whether he would agree that what was "*..... clearly and unequivocally stated is the fact that JPS was refinancing one of its existing debts with the Bank - US\$180 Million.*" Mr. Brown responded that he agreed that the loan was restructured in two (2) parts - a US dollar portion and a Jamaican dollar portion which allowed interest rates on both to be reduced.
26. Under further cross examination:
- He agreed that some customers had come off the grid.
 - He agreed that the licence did not guarantee that the Company should show a profit or return on investment
 - He did not agree that there was no obligation on the part of the Office of Utilities Regulation (OUR) to grant JPS an increase that would allow the Company to recoup losses or costs. The OUR was obliged to grant JPS a rate increase when it made a submission if certain conditions were met but could not, however, say that the Company had been granted a rate increase every time that a submission was made to the OUR.
 - He said that while he was aware that the licence stipulated that certain conditions had to be met for the grant of rate increases, he could not identify the section as he did not have the licence with him.
 - He disagreed with the statement that there "*... was no guarantee on profit or revenue for JPS in the licence*"
 - He strongly disagreed with the statement that "*... there is no provision in the licence that would guarantee JPS an increase in rate, based on increases for salaries and fringe benefits to employees.*"
- He accepted the statement that the OUR used a stipulated method of measuring productivity in relation to a rate adjustment.

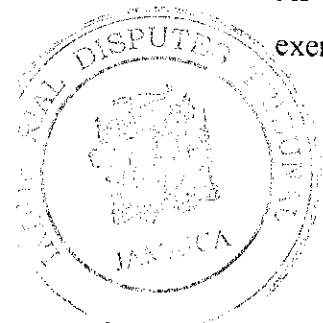


- He had no input in submissions made to the OUR.
27. The Union's third witness was Mr. John Levy, General Secretary. Examination in chief of Mr. Levy was led by Mr. Robert Harris. Mr. Levy testified as follows:
- The accumulated inflation rate for the period 2012 to 2017 was in the region of 34% to 35%
 - The accumulated salary increases would have been 29%
28. In response to a question as to whether the information he had provided in respect of the accumulated inflation rates had any relation to what was contained in the extracts of the Economics Statistics publication by the Statistical Institute of Jamaica, he stated:
- The nominal numbers contained in the publication suggested an accumulated 29% wage increase versus an accumulated 34% to 35% inflation rate presented by him
 - A 29% wage increase, after taxation would result in a net increase of 20% to 21%
 - The employee's purchasing power would be negatively affected from between 5% to 6% up to a maximum of about 15% - the accumulated net effect of the adjustment versus inflation
 - The factors used in determining the items of claim were inflation, taxation and the performance of the employees.
29. Under cross examination by Ms. Robertson, Mr. Levy testified as follows:
- The percentage increases in salaries were 4% in 2012 and 5% for each year from 2013 through to 2017
 - He did not agree that the job evaluation exercises done by the Company covered the period 2001 – 2007, but agreed that there was implementation eight years after. In answer to a follow-up question, he stated that the issues pertaining to this exercise that had continued beyond 2008 had to do with anomalies.
 - The 29% accumulated salary increase did not factor in the annual compounding of rates. As a result, it was possible that increases on the benefits would amount to more than 29%.
 - He agreed that any agreement as it related to wages and fringe benefits would be managerial decisions.



THE COMPANY'S CASE:

30. Ms. Angela Robertson, Attorney-at-Law representing the Company, stated that the evidence that would be presented by the Company would indicate that the Company was asking for a three years contract although she realized that the Terms of Reference to the Tribunal specified two (2) years.
31. She stated that the Company had One Thousand One Hundred and Eighty-Four (1,184) employees represented by four (4) Unions - the National Workers Union, the Bustamante Industrial Trade Union, the Managers Association and the Union of Clerical, Administration and Supervisory Employees. She continued by saying that the Unions, with the exception of UCASE, had signed and completed their negotiations with respect to salary and other benefits.
32. She stated that in relation to the UCASE claims several meetings were held at the local level and at the Ministry of Labour and Social Security but the parties were unable to reach a settlement and that on May 6, 2019, members of the Bargaining Unit took industrial action and as a consequence the Industrial Disputes Tribunal issued an "Order to Cease Industrial Action."
33. She drew attention to sections of the Company's Brief from which the following are highlighted:
- Salaries payable to the workers represented by UCASE exceeded those paid to their counterparts and were higher than the average salaries in the economy. In the circumstances and given the state of the industry generally, the offers made by the Company for increases in salaries and fringe benefits were within the Company's ability to pay.
 - Although partially owned by the Government of Jamaica ("GOJ"), JPS and the government were not one and the same and therefore benefits that UCASE claims were being paid to GOJ workers were not applicable to workers at the Company and there was no basis for UCASE's claim in that regard.
 - As a consequence of the implementation of the Job Evaluation and Reclassification exercise conducted in May 2018, for the period January 1, 2001 to December 31, 2007

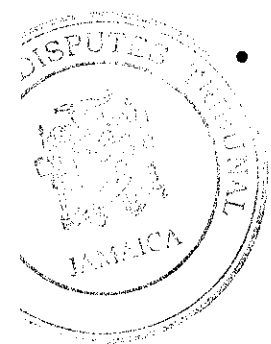


the salaries for workers in the various categories were within the top ninety-five percentile (95%) of the market.

- “Freedom of collective bargaining must involve the freedom to refuse to agree terms and conditions which are considered unacceptable”. For a Company that was compensating most of its workers above the industry standard and providing a healthy array of fringe benefits, it should not be mandatory to increase wages and fringe benefits in excess of its ability to pay.
- Any adjustment above the Company’s offers would adversely affect the Company’s ability to remain in business as a viable entity if there was any downturn in the industry and would inevitably be detrimental to the workers of the Company.
- The Tribunal must consider the fact that the Company’s mandate was to operate within the constraints of an approved budget, and also that workers received benefits that were not granted in other organizations. Anything in excess of what the Company had indicated that it could afford to pay would be detrimental to the Company.

34. The first witness called was Mr. Vernon R. Douglas, Chief Financial Officer. Mr. Douglas testified inter alia:

- From a financial point of view JPSCo was “... what [he] would characterise as a patient in the operating theatre, still having undergone a set of surgeries, but still requiring additional surgery.”
- Exhibit 3 The Publication - **JPS at a Glance** illustrated the financial performance in terms of profit and loss for three financial years ending December 2016, 2017 and 2018, as well as the first quarter of the financial year 2019. The key variables were displayed in terms of revenue, gross profit, operating costs, other operating expenses and financing costs resulting in the profit after tax, et cetera, for each of the performing years.
- JPSCo was a trading business and its performance in terms of return on equity was approximately 6.6% for 2016, 6.2% for 2017, 7.3% 2018 and a negative 3.7% for the first quarter of 2019, against reported profits of US\$24M in 2016, US\$24.5M in 2017 and US\$31M in 2018.
- The JPS was underperforming. “Why? If you think about it, in order to reinvest up to the levels of US\$62M and US\$117M in terms of Capital Expenditure, the business has to



A handwritten signature or initials, possibly "JPS", enclosed in a circle.

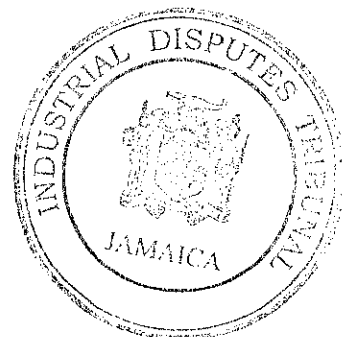
earn a return probably upwards of around 11 per cent on Capital in order to be able to sustain the regular performance of its assets that are coming each year requiring investment a utility is different from a regular fast-moving consumer goods company A utility... requires heavy capital investments in order to just survive because the asset that is used to generate, transmit and distribute power require annual capital investment just to product its output, which is electricity. With this level of performance it means that even with the loans that the Company has been borrowing and only paying interest it is in dire strait when capital investments or assets come to the end of life. For example, the Old Harbour Power Plant, the Rockfort Power Plant they would not have earned enough returns in order to replenish its fleet that it needs to continue to do business.”

- JPS was financed by both equity and debt with major capital investments financed by external debt
- It was incorrect to say that the transaction between Sagicor Bank Jamaica and JPS had refinanced the JPS loan portfolio. The loan was in relation to a portion of an existing debt.

35. In response to a question regarding the impact, if any, that the payment of accumulated sick leave would have on the Company’s financial position, Mr. Douglas explained:
“... The sick leave is an on-going liability that we carry on our balance sheet. It is revalued in accordance with the wage bill of the Company. So if there is a change in the expenditure relating to wages, you would have the same accruing effect on the total liability...”

36. In the continuing examination in chief, Mr. Douglas stated inter alia:

- that he was familiar with the document - Exhibit 16 entitled *“Office of Utilities Regulations Jamaica Public Service Company Limited Annual Review 2018 & Extraordinary Rate Review, Determination Notice”*, and he was able to provide answers to questions relating to how the various components of the licence were evaluated, such as the licensing mechanism, filings with the Regulator, the annual performance review, heat rate performance (efficiency of the plants), et cetera.



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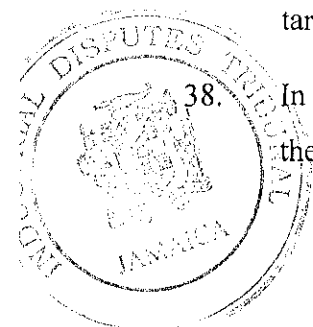
- system losses comprised technical and non-technical components. Non-technical losses relating to electricity theft had financial consequences. While system losses had reduced between the period 2012 and 2018, it was marginal.
- the licence did not contain any provision for a guaranteed percentage of profit
- the Company had not achieved a desirable level of return on investment sufficient to offer large increases to staff without having adverse consequences.

37. Mr. Douglas in cross examination by Mr. Levy testified as follows:

- Based on the statistics kept by the Company, year 2018 would have seen one of its best performances
- A new standard in the performance of generating units resulted in the lowest thermal heat rate in recorded history
- There was an improvement in cash flow over the previous year 2017
- A 300% increase in cash at year end
- When measured by the return on invested capital the financial performance of the Company was dismal
- There was a contraction in business from rate 60 customers (street lighting) and sales in this category would contract with the implementation of LED
- The terms of the licence under which JPS operates is regulated by OUR
- Entrenched in the licence is a review operation. Any over-or under-achievement would result in a benefit or a penalty. This related specifically with operational statistics.
- Mr. Douglas agreed with the narrative contained in Exhibit 13 (*JPSCo Annual Report 2018*), regarding an improved financial performance. It read in part "... in 2018 JPS achieved a net profit of US\$30.6M based on the determined efforts of the management team to improve operational efficiency[and] the strong commitment of our employees...". He did not disagree with anything in the statement.

He maintained his view that despite improvement in financial operations in 2018 and 2019 the Company was failing, as inter alia, the Company did not achieve the net profit targets set for those periods. None were yet set for year 2020.

38. In response to the statement that for the last nine (9) years of audited financial statements the Company had made profits, Mr. Douglas said, "I can't recall a loss."



39. The second witness called by the Company was Mr. Vaughn McDonald, Head, Employee Relations. Mr. McDonald was first of all examined extensively with regard to the items of claim for the Technical, Administrative and Supervisory Staff.

40. Mr. McDonald stated that the Company was not in a position to increase the existing benefits in relation to certain items of the Claim listed hereunder:

Item 5 - Per Diem

Item 9 - Mileage

Item 13 - Sunday Premium (Per Sunday worked)

Item 14 - On-Call Allowance

Item 15 - On-Call/Special Allowance

Item 18 - Shift Premium

Item 20 - Renewable Allowance (Wind Turbine)

41. With respect to the items of claim below, he stated "*..... the extent of the Company's ability to grant increases is limited to no more than the sum offered for each year of the duration of the contract.....*":

Item 2 - Taxable Basic Pay: Year 1 – 3%, Year 2 – 3%

Item 4 - Clothing Allowance: Year 1 - \$128,000 p.a.; Year 2 – \$130,500 p.a.

Item 7 - Lunch Subsidy: Year 1 –\$428; Year 2 –\$436

Item 8 - Motor Vehicle Upkeep:

Claim 8A - 4x4 vehicles – Year 1 -\$96,000 per month; Year 2 - \$98,000 per month

Claim 8B - Grades 8-10 Travelling officers - Year 1- \$84,150; Year 2- \$85,833

Claim 8C - Grades 1-7 Non-travelling officers - Year 1-\$58,650, Year 2- \$59,832

Item 10 - Transportation Allowance: Year 1 -\$25,500; Year 2- \$26,010

Item 11 - Vacation Allowance:

Employees in Grades 4-10 with 25 years' service and over –

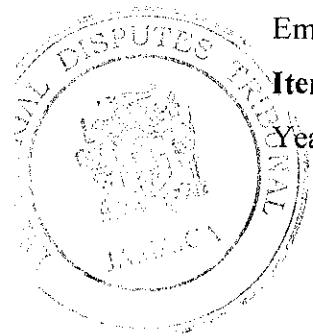
Year 1 -\$108,120 p.a.; Year 2- \$110,280 p.a.

Employees in Grade 3 - Year 1 - \$88,740 p.a.; Year 2 - \$90,515 p.a.

Employees in Grade 1 & 2 - Year 1 - \$82,620 p.a. Year 2 - \$84,272 p.a.

Item 12 - Taxi fare:

Year 1- \$265 for first mile; Year 2 - \$270 for first mile



Each additional mile - Year 1 - \$72 per mile; Year 2- \$74 per mile

Item 17 - Removal Assistance:

Year 1- \$20,000 per occasion; Year 2- \$25,000 per occasion – In keeping with approved limits.

42. With respect to the other items of claim, he testified as follows:

Item 1 - Duration of Contract:

This was a two-year contract that would have ended in December 2019

Item 3 - Collective Labour Agreement:

There was no Collective Labour Agreement in place but a Heads of Agreement (HOA). The proposal was to collate the various items in the HOA to make one document. This was being addressed at the local level.

Item 6 - Meal Allowance:

It was his understanding that this Item was agreed at the local level; but should the Tribunal be required to make an Award, it would be J\$821 in Year 1 and J\$837 in Year 2.

Item 16 - Electricity:

The Company had agreed to maintain the existing policy with the benefit of a 50% discount on electricity billings.

Item 19 - Housing for Employees:

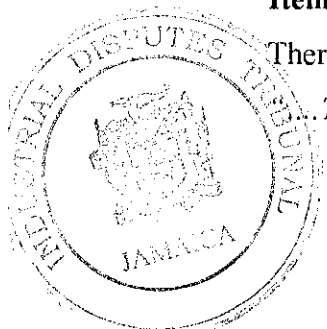
This was being addressed at the local level but would have to be determined by management.

Item 21 - Other Benefits:

- Conversion of the Pension Scheme from a Defined Contribution to a Defined Benefits Scheme for all members of the bargaining unit.
- New Employees
 - New Terms and Conditions 2013 were to be reviewed
 - Health Insurance Scheme to be extended to retirees and persons who leave the Company with twenty (20) or more years of service

Item 22 - Loss of Jobs:

There should be no loss of jobs during the duration of the Contract. He explained that *This was articulated at the clarification meeting that the Company could make no*



commitment as reorganization/realignment was on-going, and as such should not be considered by the Tribunal in its Award ...”

Item 23 - Parental Duty Leave:

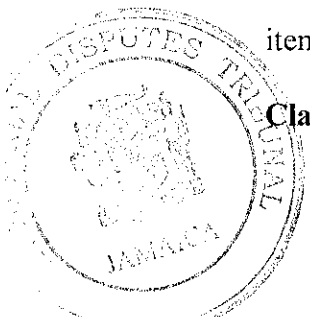
This claim should be determined by management

Item 24 - General: All Other Benefits

43. In response to the recurring question as to the basis of the Company’s offer Mr. McDonald repeatedly explained “... *the Company is asking the Tribunal that in light of the fact that the Union did not agree to the variation of the Sick Leave benefit, which benefit is unsustainable, the Company was not in a position to increase the existing benefit set out herein for any period of the three-year contract..”*
44. In his continuing testimony, Mr. McDonald confirmed that UCASE had not agreed to the variation of the existing sick leave benefits while the three other bargaining units had agreed.
- He confirmed “...*yes, that was the only way the Company would have had the fiscal space to grant the additional amount from what had been proposed, just as UCASE, the figure that was placed on the table...*”
 - Where the items would have been the same across the bargaining units, similar proposals were made; and differences in the proposals were possible where agreements were reached between the Company and the Unions in relation to the sick leave arrangement
 - At the commencement of the negotiations the across-the-board offer for increased wages and improved fringe benefits would have been the same for all bargaining units
 - The negotiations for both bargaining units represented by UCASE were conducted simultaneously
45. Mr. McDonald continued his testimony regarding the Claim made on behalf of the Executive Assistants. He testified as follows:

The Company was asking the Tribunal to make no awards in relation to the following items of claim:

Claim 3 – Collective Agreement: This was being addressed at the local level.



Claim 6 – Per Diem: The Tribunal should make no award

Claim 7- Meal allowance: This item did not exist in the previous Heads of Agreement, and consequently there would be no consideration for new items

Claim 9(a) - motor vehicle upkeep: 4x4 vehicles –This claim was never part of the existing Heads of Agreement and was not applicable to Executive Assistants

Claim 9(b) - Grades 8 and 10 Travelling officers: This item never existed in the previous Heads of Agreement and there would be no consideration for new items

Claim 10(a) - Mileage–This was to be dealt with on the same basis as Claim 9B. In addition, the nature of their job was rudimentary

Claim 10(b)- Flat rate - On the similar basis as Claim 9(b)

Claim 10(c) - Passenger mile: On the similar basis as Claim 9(b)

Claim 11 – Transportation Allowance:

Claim 13 -Taxi fare:

Claim 14 - Sunday premium:

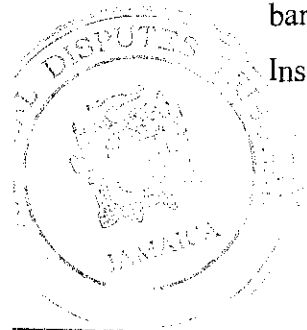
Claim 15 –On-call Allowance: The Union did not agree to the variation of the sick leave benefit, and their functions do not require them to be on-call

Claim 16 –On-call Special Allowance: The Union did not agree to the variation of the sick leave benefit.

Claim 19-Shift premium: This was never a part of any existing Heads of Agreement and there would be no consideration for new items.

Claim 20-Housing for employee: This claim was to be determined by management

Claim 21-Other benefits: Conversion of the Pension Scheme from a Defined Contribution Pension Plan to a Defined Benefits Pension Plan for all members of the bargaining unit. New Terms and Conditions 2013 were to be reviewed; and the Health Insurance Scheme was to be extended to retirees and persons with twenty (20) or more



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years' service who leave the Company. The Tribunal should not make an award as this claim was never itemized during negotiation.

Claim 22-Loss of job:

Claim 23-Parental Duty Leave: This should be determined by management

46. With respect to the following items of Claim:

Claim 4 – Incentive Programme: The parties had agreed that further discussion would have taken place at the local level on November 15, 2018

Claim 17 –Electricity: To be extended to persons with twenty (20) or more years of service, on separation from the Company, save and except for dismissal. This item has been already agreed as per policy

47. With respect to the other items of Claim, he stated:

Claim 1- Duration of contract: A period of 2 years commencing January 1, 2018 to December 31, 2019. The Company's position was that the duration of the contract period should be 3 years

Claim 2- Taxable basic salary: Year 1 -3%; Year 2 -3%

Claim 5-Clothing Allowance: Year 1- \$130,560; Year 2- \$133,171

Claim 8-Lunch Subsidy: Year 1- \$428; Year2- \$436

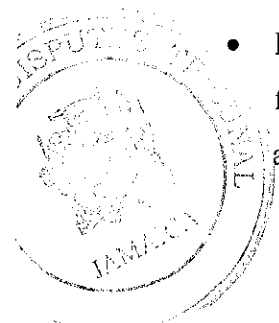
Claim 9 - Motor Vehicle Upkeep: Year 1- \$86,700; Year 2- \$88,434. He explained that this was a negotiated benefit previously agreed with this group. This was not tied to grade or travelling

Claim 12-Vacation Allowance: Year1- \$111,180; Year 2 -\$113,403

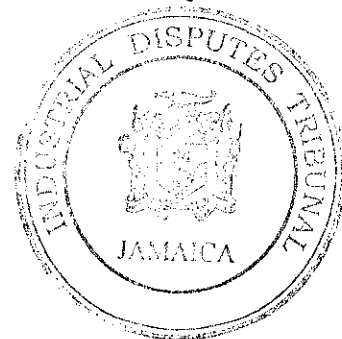
Claim 18-Removal Assistance: Year 1-\$20,000; Year 2- \$25,000

48. In continuing Mr. McDonald further testified that:

- Both the Union and employees were aware of the Company's position that there were financial limitations to offering increased wages and fringe benefits if there was no agreement to the variation of the sick leave benefit



- The offer made by the Company was for a 3 year contract period, but in light of the fact that it is a 2 year contract period that is now being negotiated, the offers for years 1 and 2 would not be changed as the budget was cast in that regards. There was no flexibility other than the variation of the sick leave policy.
49. During cross examination Mr. McDonald testified as follows:
- The Technical and Administrative Group had an accumulative bankable arrangement with regards to sick leave for which they would be paid on separation from the Company, except in the case of dismissal.
 - He agreed that the Executive Assistants did not have this arrangement re sick leave and that there was no issue in relation to the Executive Assistants accumulating sick leave, and that the statement put to him that the bankable accumulative sick leave right was given up years ago before they joined the Union.
 - The Disciplinary Code was applicable to all employees.
 - However, not all of the provisions in the Policy Manual were applicable to Executive Assistants as there were specific terms and conditions in their contract of employment agreed with the Company prior to them becoming unionized.
 - In general, the Company offered salary increases of 3% for each year of the contract period and 2% respectively for other allowances.
 - The Union had no interest in a discussion regarding sick leave, and had requested that the Company separate the sale of the sick leave benefit from the salary negotiations. However, the Company had made it clear that the two things worked together and that in order for the Company to increase its offer the arrangement regarding sick leave was what would provide the "*fiscal space*".
 - He agreed that the Company and Union had been engaged in frank and open discussions in relation to the issue of sick leave after the last contract period had ended.
 - The Company had signed an agreement with the National Workers Union for parity with UCASE on some items, should UCASE obtain higher offers on some special items, such as, clothing allowance.



50. Mr. Levy before continuing his cross examination of Mr. McDonald invited attention to the Union's Brief and advised the hearing that the Union was withdrawing the following items of claim with respect to the Executive Assistants:

Claim 14 - Sunday Premium

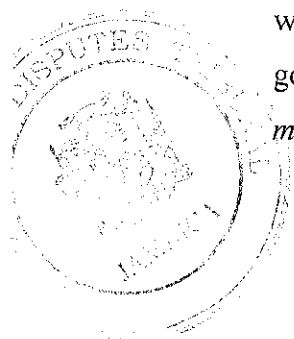
Claim 19 - Shift Premium

51. The cross examination of Mr. McDonald then continued. With respect to the question as to whether he would agree that the issue of sick leave was in the Company's view the major deterrent in making reasonable offer to the workers on the different items, he responded as follows - *"I disagree with you, Mr. Levy, because there is an offer on the table to the Unions. The Unions requested more money, the Company says in order to have the fiscal space to provide more, the Sick Leave Buyout has to be on the table as what we have provided to the other Unions, as simple as that..."*

52. With regard to the sick leave facility, he stated that the Company had reached an agreement with the Unions representing workers at JPS with the exception of UCASE. The agreement was broken down into two (2) parts—the first related to the buy-out of the accumulated balances as at the end of 2017, and the other aspect was to buy-out the agreement so that employees would no longer accumulate sick leave for which they would be paid on separation from the Company. This was the agreement reached with the other Unions - *"... an agreement, it is sacrosanct."* He testified that Mr. Levy had stated that he was not interested in pursuing that matter, *"... that is why we are here"*.

53. In answer to a statement that there was no agreement on that particular issue, he maintained that there was a signed agreement with the parties - *"we have it in black and white."*

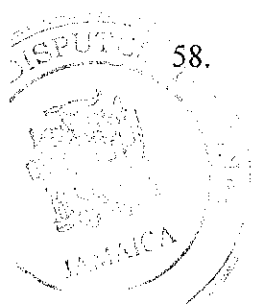
54. During re-examination by Ms. Robertson, Mr. McDonald was asked to tell the Tribunal why the Company had expected the Executive Assistants to be a part of the sick leave buyout. In his response he stated that the Company was looking at one change that would affect the entire Company, in line with what had been done with the other Groups, going forward *"... it would be consistent to have one [set of] terms and conditions in managing the whole process"*



55. In response to the question as to whether at any time during the negotiations, UCASE had agreed to vary the sick leave benefit he responded *"No, they did not agree to vary the sick leave benefit."*

THE COMPANYCLOSING SUBMISSIONS:

56. Ms. Robertson in her closing arguments requested the Tribunal to accept as part of her closing submission, paragraph 16 to 42 of the Company's Brief, particularly paragraphs 22 to 42, which laid the basis for the affordability of any claim or any response to this Union's claim. She stated that it would not be necessary to go through these in detail at this point. She then submitted as follows:
- *"Even if the Union is correct, which our submissions are that they are not correct, ... [and] even if the Union was correct that the Company had made some profits and may have been profitable at a point in time, the current landscape would have eroded that a hundred fold, and will continue to do so based on the uncertainties of the future. That, together with the Union's failure to agree to any variation in the sick leave could make it even worse."*
 - *"The evidence of Mr. Vernon Douglas clearly demonstrated that Mr. Markland Brown's interpretation of the financial position of the Company was totally incorrect."*
 - *"The evidence given by Mr. Vernon Douglas outlined quite clearly the stricture that JPS has and the careful monitoring of the OUR of any request He also made it clear that any submissions to the OUR do not include projected increases for wages and fringe benefits."*
57. Ms. Robertson then re-examined the evidence and made reference to the percentage increases requested by the Union for each of the items of claim and submitted as follows:
- "... but the percentage increases of each of these items when you add that up together there is no Company that can make those increases and remain economically viable, much less a Company in the precarious financial position that JPS is in."*
58. She requested the Tribunal to pay special attention to Exhibit 16(OUR Determination Notice) and Exhibit 30(UCASE Allowances and Payroll Breakdown), and then



highlighted the items of claim and the Award that the Company was requesting the Tribunal to make.

59. Ms. Robertson requested the Tribunal to accept as part of her closing submission paragraphs 46 to 54 of the Company's Brief. For ease of reference, these paragraphs are included hereunder.

Other Benefits

Para 46

While Collective Bargaining is regulated and governed by the provisions of the Labour Relations Code (the Code) it results from a mix of economic, societal and historical factors. Collective Bargaining envisages negotiations in simple terms leading to an Agreement.

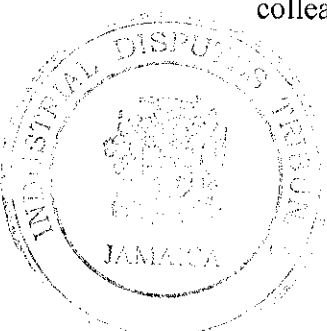
Para 47

It is important to note benefits that the Company offers outside of the HOA as these must be taken into account when reviewing increases to be granted to the workers and the ability of the Company to meet the demands of UCASE. In addition to the benefits set out in the claims the Company grants the under-mentioned to the workers in the bargaining units:

- i. Scholarship for children of workers;
- ii. Education assistance programme;
- iii. Shoes and accessories allowance;
- iv. Group life insurance;
- v. Group health insurance;
- vi. Pension - Company contribution; and
- vii. Triple time pay during holidays.

Para 48

The lower worker turnout is a testament to and the acknowledgement and appreciation of the workforce for the salaries paid, benefits and opportunities granted that their colleagues in other industries do not benefit from.



Comparative data

Para 49

It is submitted that salaries payable to the workers represented by UCASE exceed those paid to their counterparts and are higher than the average salaries in the economy. In the circumstances and given the state of the industry generally, the offers made by the Company for increases in salaries and fringe benefits are within its ability to pay and are those that the Company can afford.

Para 50

It is to be noted that although partially owned by the Government of Jamaica (“GOJ”), JPS and the government are not one and the same and therefore benefits that UCASE claims are being paid to GOJ workers are not applicable to workers at the Company and there is no basis for UCASE’s claim in that regard.

JPS Reclassification

Para 51

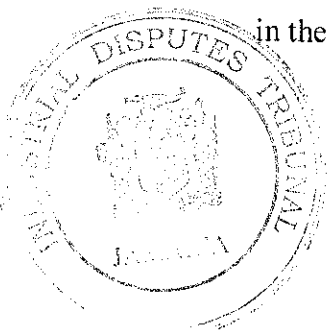
As a consequence of the implementation of the Job Evaluation and Reclassification exercise in May 2018, for the period January 1, 2001 to December 31, 2007 the salaries for workers at the Company fell within the top ninety-five percentile (95%) of the market.

Para 52

“Freedom of collective bargaining must involve the freedom to refuse to agree terms and conditions which are considered unacceptable”. Therefore, a Company that is paying most of its workers above the industry standard and provides a healthy array of fringe benefits should not be mandated to increase its wages and fringe benefits in excess of its ability to pay.

Para 53

Any adjustment more than the Company’s offers outlined herein would adversely affect the Company’s ability to remain in business as a viable entity if there was any downturn in the industry and would inevitably be detrimental to the workers of the Company.

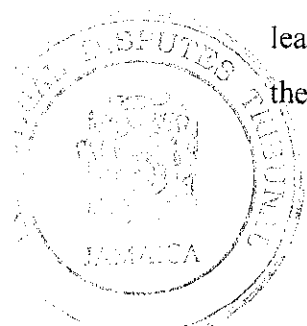


Para 54

The Tribunal must consider the fact that the Company's mandate is to operate in an approved budget, workers receive benefits that are not granted in other organizations and anything over what the Company has indicated that it can afford to pay will be detrimental to the Company.

THE UNIONCLOSING SUBMISSIONS:

60. Mr. Levy in his closing submission stated that a lot had happened since the negotiation had started. The cost of living had increased, as also toll rates; the Jamaican Dollar had devalued to an all-time low and in all of this the Union had lost 10% of its membership due to redundancies, retirements and resignations.
61. Mr. Levy stated that he rejected the Company's argument that any adjustments to salary and fringe benefits in excess of what the Company had offered would adversely affect their ability to remain a viable entity.
62. He stated that the JPS had made ten (10) consecutive years of profit (2010 – 2019); it was not a failing Company. Over the six-year period (2012 – 2017) the workers had received a cumulative salary increase of 29% (4% in 2012, and 5% from 2013 – 2017) and that all these increases represented an attempt to match inflation.
63. He requested that the Tribunal ask itself "*What if any dramatic event or circumstances have occurred since the last contract period that would now imperil the Company or cause it to reduce the level of increase it can make when compared to previous years?*"
64. He stated that the 3% increase for salary that was put on the table would place the employees behind the rate of inflation, and their purchasing power would have been less than it was the previous year and would have got worse in 2019.
65. Mr. Levy in continuing his closing addressed the Tribunal on the claims and the justification therefor. He stated that the amount paid out in respect of accumulated sick leave was low and predictable and therefore should have allowed the Company to invest the funds allocated for that purpose in order to create a fiscal space.



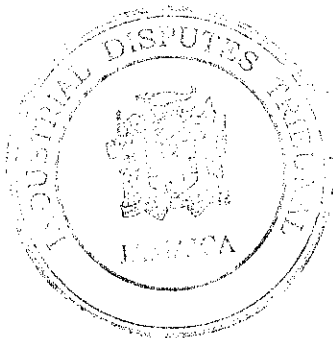
66. He continued, stating that the Company had misled the Tribunal that there was an agreement with the other Unions to the buyout of the sick leave accumulation benefit, and that the Tribunal's reliance on that evidence would result in faulty judgement.

"... Our [The Union's] position is backed by the facts and the figures, Four Thousand Million Dollars in profit in one year, Three Thousand Eight Hundred-Plus Million profit last year 2019..."

67. Mr. Levy outlined what he regarded as the gains of the Company:

- An approximate 300% increase in cash flow between 2017 and 2018.
- Net profit of US\$30.6M or J\$4B
- Historic investment of US\$132M in local energy infrastructure
- Best reliability performance of the JPS generating units in recorded history (which meant that the generators had remained online)
- Refinancing of the debt portfolio
- Obtained AAA triple rating from CariCRIS
- Fewer outages for customers - the best performance in ten years.
- Over 100,000 smart meters installed, which was 5 times more than the Company had ever done in any given year. This significantly reduced the cost of doing business because the Company could remotely read, connect or disconnect meters
- Paid out US\$10M or J\$1.28B. No such dividend was paid in 2017
- Improved safety culture
- Lowest thermal heat rate in the history of the Company - which meant that energy was being generated in the most efficient way
- Completion of the world's largest hybrid storage energy project

68. Mr. Levy submitted that the Union did not accept the Company's position that it was financially troubled based on the positive moves in relation to cash flow, overdraft and the payment of an ordinary dividend



TRIBUNAL'S DELIBERATIONS:

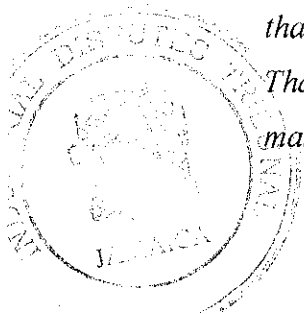
69. The Tribunal in its deliberations was guided by the submissions made by both parties, the evidence given by the witnesses and the documents admitted as Exhibits during the thirty-five (35) sittings convened to hear this matter.
70. The Tribunal noted the statement made by the Company's Attorney that the contract period should be for three (3) years. The Tribunal was however aware that the claims served by the Union were in respect of a contract period of two (2) years, covering January 1, 2018 to December 31, 2019 as was outlined in the Terms of Reference of the dispute.
71. Members of the Tribunal noted the following statements made in the closing submissions presented by both parties.

The Company

72. Ms. Angela Robertson, the Company's Attorney, in her closing submission stated that the Company had incurred a major liability due to the facility that allowed the workers to bank unutilised sick leave for the duration of their employment. At the termination of their employment, except in cases of dismissal, the employee was entitled to be compensated for all unutilised sick leave payable at their current rate of salary. This, the Company stated was not sustainable as the value of that liability had risen to approximately One Billion Jamaican Dollars (J\$1B), which had led the Company to adopt a sick leave pay-out policy. This action she stated would "... *create the fiscal space for the Company to increase its offer of wages*"

She further submitted as follows:

"Even if the Union is correct, which our submissions are that they are not correct, ... [and] even if the Union was correct that the Company had made some profits and may have been profitable at a point in time... .., the current landscape would have eroded that a hundred fold, and will continue to do so based on the uncertainties of the future. That, together with the Union's failure to agree to any variation in the sick leave could make it even worse."



“The evidence of Mr. Vernon Douglas clearly demonstrated that Mr. Markland Brown’s interpretation of the financial position of the Company was totally incorrect.”

“The evidence given by Mr. Vernon Douglas outlined quite clearly the stricture that JPS has and the careful monitoring of the OUR, of any request He also made it clear that any submissions to the OUR do not include projected increases for wages and fringe benefits.”

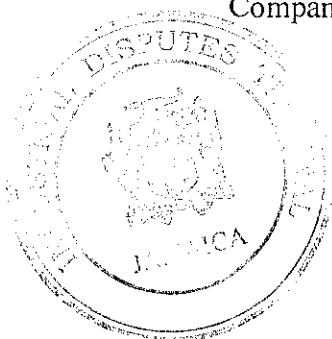
73. Ms. Robertson asked the Tribunal to note the benefits provided by the Company that were not included in the Heads of Agreement.

The Union

74. Mr. Robert Levy, the representative for the Union requested the Tribunal to ask itself “What if any dramatic event or circumstances have occurred since the last contract period that would now imperil the Company or cause it to reduce the level of increase it can make when compared to previous years?”, and also stated that the Union’s position was “... Our [The Union’s] position is backed by the facts and the figures, Four Thousand Million Dollars in profit in one year, Three Thousand Eight Hundred-Plus Million profit last year 2019...”

75. In continuing his presentation Mr. Levy highlighted all the factors that the Union had considered in determining the claim, which he said were reasonable, based on their assessment of the Company’s ability to pay. The Union’s information was that the Company had made its largest profit in a decade and that its bad debt portfolio had reduced considerably.

76. He also stated that there was no agreement between the Company and the other Unions representing other bargaining units with regard to the buyout of unused sick leave and drew the Tribunal’s attention to what he had outlined as the gains made by the Company in recent years.



A handwritten signature, possibly "JPS", is located in the bottom right corner of the page.

The Tribunal

77. The Tribunal noted the submission made by the Union that the claims were reasonable based on their assessment of the Company's ability to pay, given the fact that the Company had made its largest profit in a decade. However, note was also taken of the testimony given by the Company's Financial Officer, Mr. Vernon Douglas, during which he had stated inter alia:

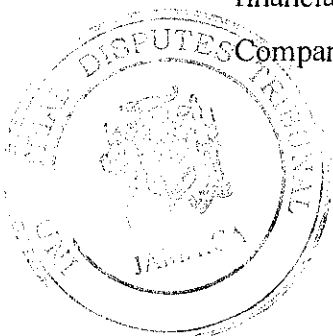
"[From a financial point of view JPSCo was] ... what [I] would characterise as a patient in the operating theatre, still having undergone a set of surgeries, but still requiring additional surgery."

78. The Tribunal in its considerations noted that the Company had submitted that the extent to which it could grant increases was limited unless there was an agreement to vary the policy regarding unutilized sick leave, the continuation of which the Company submitted was unsustainable as the current liability had accumulated to One Billion Jamaican Dollars.

79. The evidence submitted to the Tribunal was that there were four Unions representing separate bargaining units in the Company. With the exception of UCASE, the Company had finalized wage and fringe benefits negotiations with the three other Unions that had agreed to the variation of the sick leave policy.

80. The Tribunal considered Mr. Levy's submission that no agreement had been reached with the other Unions. However, he did not provide any evidence to contradict the testimony given under oath by Mr. Vaughn McDonald, Head of Employee Relations, in which he (Mr. McDonald) stated *"The Company had an agreement with all the Unions, an agreement, it is sacrosanct...."*

81. The Tribunal also examined the level of percentage increases requested by the Union in the items of claim and considered the impact that this would have on the Company's financial position, and also Mr. Douglas's testimony which in part stated that the Company was underperforming. The relevant extract is quoted below:



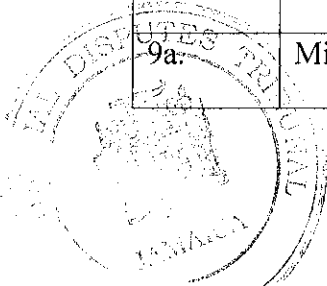
“Why? If you think about it, in order to reinvest up to the levels of US\$62M and US\$117M in terms of Capital Expenditure, the business has to earn a return probably upwards of around 11 per cent on Capital in order to be able to sustain the regular performance of its assets that are coming each year requiring investment a utility is different from a regular fast-moving consumer goods company A utility... requires heavy capital investments in order to just survive because the asset that is used to generate, transmit and distribute power require annual capital investment just to produce its output, which is electricity. With this level of performance it means that even with the loans that the Company has been borrowing and only paying interest it is in dire strait when capital investments or assets come to the end of life. For example, the Old Harbour Power Plant, the Rockfort Power Plant they would not have earned enough returns in order to replenish its fleet that it needs to continue to do business.”

AWARD:

82. The Tribunal following its deliberation makes the following Award.

Technical and Supervisory Staff

Claim #	Claim Item	Award
1	Duration of Contract	Two years – January 1, 2018 to December 31, 2019
2.	Taxable Basic Salary	Year 1 - 4%; Year 2 - 3%
3.	Collective Labour Agreement	
4	Clothing Allowance	Year 1 - \$130,000; Year 2 - \$133,000
5	Per Diem	Year 1 - \$5,500; Year 2 - \$6,000
6	Meal Allowance	Year 1 - \$821; Year 2 - \$837
7	Lunch Subsidy	Year 1 - \$500; Year 2 - \$500
8a.	Motor Vehicle Upkeep 4x4 vehicles	Year 1 - \$96,000; Year 2 - \$98,000
8b.	Grade 8 – 10 and Travelling Officers	Year 1 - \$84,150; Year 2 - \$85,833
8c.	Grade 1 – 7 and Non-travelling Officers	Year 1 - \$58,650; Year 2 - \$59,823
9a.	Mileage – Two-part	



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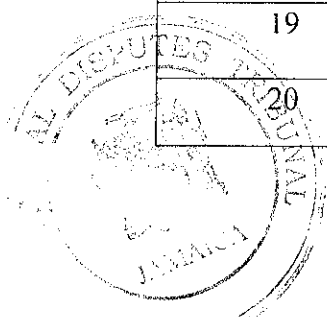
	East Rate 30% differential West Rate	No Award
9b.	Flat Rate (where no upkeep is paid)	No Award
9c.	Passenger Mile	\$12 for the duration of the contract
10	Transportation Allowance	Year 1 - \$25,500; Year 2 - \$26,010
11	Vacation Allowance	Employees with 25 or more years' service Grade 4-10 Year 1 - \$108,120; Year 2 - \$110,280 Grade 3: Year 1 - \$88,740; Year 2 - \$90,515 Grade 1 - 2: Year 1 - \$82,620; Year 2 - \$84,272
12	Taxi fare (maximum mileage for which taxi fare is payable is 25 miles)	Year 1 - \$300 for first mile; Year 2 - \$310 for first mile. Each additional mile Year 1 - \$72 per mile; Year 2 - \$74 per mile
13	Sunday Premium (per Sunday worked)	No Award
14	On-Call Allowance	No Award
15	On-Call Special Allowance	No Award
16	Electricity	Existing benefit to be maintained as is.
17	Removal Assistance	Year 1 - \$20,000, Year 2 - \$25,000
18	Shift Premium	No Award
19	Housing for Employees	No Award- matter being addressed at the local level.
20	Renewable Allowance	No Award
21	Other Benefits	No Award
22	Loss of Jobs	No Award
23	Parental Duty Leave	No Award
24	General	No Award
25	Reserve Clause	No Award



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Executive Assistants

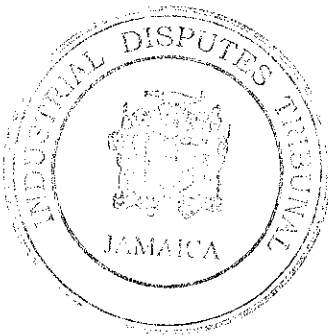
<i>Claim #</i>	<i>Claim Item</i>	<i>Award</i>
1	Duration of Contract	Two years -- January 1, 2018 to December 31, 2019
2	Taxable Basic Salary	Year 1 - 4%; Year 2 - 3%
3	Collective Labour Agreement	
4	Clothing Allowance	Year 1 - \$135,000; Year 2 - \$140,000
5	Per Diem	No Award
6	Meal Allowance	No Award
7	Lunch Subsidy	Year 1 - \$500; Year 2 - \$500
8	Motor Vehicle Upkeep	Year 1 - \$86,700; Year 2 - \$88,434
9	Incentive Programme	No Award
10a	Mileage – Two-part	
	East Rate 30% differential	No Award
	West Rate	
10b	Flat Rate (where no upkeep is paid)	No Award
10c	Passenger Mile (for the duration of the contract)	No Award
11	Transportation Allowance	No Award
12	Vacation Allowance	Year 1 - \$111,180; Year 2 - \$113,403
13	Taxi Fare (maximum mileage for which taxi fare is payable is 25 miles)	No Award
14	Sunday Premium (per Sunday worked)	Withdrawn
15	On-Call Allowance	No Award
16	On-Call/Special Allowance	No Award
17	Electricity	Existing benefit to be maintained
18	Removal Assistance	Year 1 - \$20,000; Year 2 - \$25,000
19	Housing of Employees	No Award - matter being addressed at the local level.
20	Other Benefits	No Award



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21	Loss of Jobs	No Award
22	Parental Duty Leave	No Award
23	Paternity Leave	No Award
24	General	No Award
25	Reserve Clause	No Award

DATED THIS 20th DAY OF NOVEMBER 2020



[Handwritten Signature]
.....

Mr. Charles Jones, CD JP
Chairman

[Handwritten Signature]
.....

Mr. Errol Beckford
Member

[Handwritten Signature]
.....

Mrs. Chelsie Shellie-Vernon
Member

Witness:

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.....

Miss Philippa Parkinson
Secretary to the Division