

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 20/2020

SETTLEMENT OF DISPUTE

BETWEEN

JAMAICA URBAN TRANSIT COMPANY LIMITED

AND

MRS. SELENA MOHAMMED-WILSON

AND THE

AWARD

I.D.T. DIVISION

HON. MRS. JUSTICE MARJORIE COLE-SMITH - CHAIRMAN
(Retd.)

MRS. JACQUELINE IRONS, J.P. - MEMBER

MRS. CHELSIE SHELLIE-VERNON - MEMBER

AUGUST 5, 2021



INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**JAMAICA URBAN TRANSIT COMPANY LIMITED
(THE COMPANY)**

AND

**MRS. SELENA MOHAMMED-WILSON
(THE DISMISSED WORKER)**

REFERENCE:

By letter dated October 14, 2020 the Honourable Minister of Labour and Social Security, pursuant to Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

“To determine and settle the dispute between Jamaica Urban Transit Company (JUTC) on the one hand and Mrs. Selena Mohammed-Wilson on the other hand over the termination of her Contract of employment.”

By letter dated July 13, 2021 the Terms of Reference was amended as follows:

“To determine and settle the dispute between Jamaica Urban Transit Company Limited on the one hand and Mrs. Selena Mohammed-Wilson on the other hand over the termination of her Contract of 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:

Hon. Mrs. Justice Marjorie Cole-Smith (Retd.)	-	Chairman
Mrs. Jacqueline Irons, J.P.	-	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. Saverna Chambers	-	Attorney-at-Law
Ms. Shackeba Johnson	-	Industrial Relations Manager
Ms. Kimberley Dobson	-	Legal Officer

The **Dismissed Worker** was represented by:

Mr. Kwame Gordon	-	Attorney-at-Law
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In attendance

Mrs. Selena Mohammed-Wilson	-	Dismissed Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during six (6) sittings held between December 1, 2020 and March 2, 2021.

BACKGROUND TO THE DISPUTE:

1. The Jamaica Urban Transit Company Limited (JUTC) hereinafter called the Company is a wholly owned Government run public transportation company. The entity opened its operation in July 1999 and offers transportation services for commuters and special events.
2. Mrs. Selena Mohammed-Wilson was employed to the Company pursuant to a fixed term contract for a period of three (3) years commencing September 1, 2017 to August 31, 2020. The employment contract included a probationary period which she successfully completed and was confirmed in the position of Manager, Service Planning.
3. Subsequently, Mrs. Mohammed-Wilson applied for the vacant position of Deputy Managing Director of Operations and was successful in getting that position. The new appointment took

effect May 1, 2018. The Company terminated Mrs. Mohammed-Wilson's contract of employment by way of letter dated April 10, 2019. The letter states:

"April 10, 2019

*Mrs. Selena Mohammed Wilson
27 Oakshore Road
Wellington Heights
Kingston 6*

Dear Mrs. Mohammed Wilson:

Re: Termination of Fixed Term Contract

This advises that your Contract of Employment with the Jamaica Urban Transit Company Limited (JUTC) will terminate effective immediately, April 10, 2019 in accordance with the provisions of Clause 15.0 of your Contract of Employment dated August 31, 2017 which states:

"15.0 NOTICE

15.1. Your employment may be terminated by

- (a) Either party giving to the other three months' notice in writing or such longer period as may be stipulated by Section 3 of The Employment (Termination and Redundancy Payments) Act or any amendment thereto or substitution thereof, or in our case, salary in lieu of notice.*
- (b) Payment of salary in lieu of all or any portion of the notice period, in substitution for the notice required above"*

As a result, you will not be required to perform any services on our behalf thereafter.

In light of the above, you will receive payment in lieu of three (3) months notice in addition to any unused vacation days.

You will receive your final payment on April 25, 2019 which will be subjected to the necessary statutory deductions, and for any financial institution to which you are indebted and have authorized the Company to remit payment on your behalf and any indebtedness to the company.

Please return all Company property in your possession.

Mrs. Mohammed-Wilson, we thank you for your contribution to the JUTC and wish you all the best in your future endeavors.

Yours sincerely

JAMAICA URBAN TRANSIT COMPANY LIMITED

.....
Paul Abrahams
Managing Director"

4. She protested her dismissal. There was however, no resolution to the dispute at the Ministry of Labour and Social Security hence, the matter was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE BASED ON ITS BRIEF AND ORAL SUBMISSION:

5. The Company elected not to call any witnesses. However, they contended that, although no witnesses were called, there is no concession on their part that the dismissal was unjustified.
6. Mrs. Mohammed-Wilson was employed on a three (3) year gratuitous contract effective September 1, 2017 to expire August 31, 2020 in the position of Manager, Service Planning. She subsequently applied for the position of Deputy Managing Director of Operations and was successful in her application for the position. She assumed the position of Deputy Managing Director of Operations on May 1, 2018 and was advised via letter from the Company dated April 3, 2018 of her new compensation package as well as that *"all other terms and conditions of your employment will remain the same."*
7. The contract of employment contained a number of conditions including that, under Section 3.3 of the said contract that:

"You will be on probation for the first (3) three-month period of your employment, during which your employment may be terminated by us at any time without notice or any payment in lieu of notice..."

8. The contract also stipulated a Notice clause under Section 15.0 of the said contract which stated as follows:

"15.0 NOTICE

15.1 Your employment may be terminated by:

- a. "Either party giving to the other three months' notice in writing or such longer period as may be stipulated by Section 3 of The Employment (Termination and Redundancy Payments) Act or any amendment thereto or substitution thereof, or in our case, salary in lieu of notice.*
- b. Payment of salary in lieu of all or any portions of the notice period, in substitution for the notice required above.*

9. The contract further stated at 15.2 that the Company may terminate this agreement with immediate effect without notice if you:

15.2.1. Commit any act of gross misconduct or repeat or continue (after written warning) any other serious breach of your obligations under this Agreement; or

15.2.2 Are guilty of any conduct which in the opinion of Deputy Managing Director Operations or his designate brings you, or the Company into disrepute; or

15.2.3 Are charged with any criminal offence (excluding an offence under road traffic legislation for which you are not sentenced to any term of imprisonment whether immediate or suspended); or

15.2.4 Commit any act of dishonesty whether relating to the company, any of its employees or otherwise; or

15.2.5 Become bankrupt or make any arrangement or composition with your creditors generally; or

15.2.6 Are, in the opinion of the Deputy Managing Director Operations or his designate incompetent in the performance of your duties; or

15.2.7 Are in the opinion of the Deputy Managing Director of Operations or his designate, not performing in accordance with the terms and conditions of your employment.

15.2.8 The Company and the Contract Employee agrees that the Company reserves the right to terminate this contract by giving three (3) months notice or payment in lieu thereof.

10. The Company contends that they followed proper procedure in terminating Mrs. Mohammed-Wilson's contract as Clause 15.0 / 15.1 of the contract provide for termination. The Company is

government owned and its management operations are governed by the Public Management and Accountability Act. Therefore, the Company is mandated by statute to adhere to the rules, guidelines and policies circulated by the relevant ministerial authorities including Ministry of Finance & Planning Circular No.15 dated May 8, 2012, which outlined the treatment of employees engaged on fixed term contracts. Clause 8 (i) of the Circular states:

8. Termination

(i) *Termination "without cause"*

A contract may be terminated prior to the agreed expiration date by either party giving notice, or by the Employer paying the Contract Officer salary in lieu of notice. Notice period should be in accordance with the following rules:

<i>One (1) year contracts</i>	<i>-</i>	<i>two (2) weeks notice</i>
<i>Two (2) years contracts</i>	<i>-</i>	<i>one (1) month notice</i>
<i>Contracts of three (3) or more years</i>	<i>-</i>	<i>three (3) months notice</i>

11. One of the cases that the Company referred to in its submission was the *Housing Agency of Jamaica Limited v Industrial Disputes Tribunal and Mr. Leslie Daley (2019) JMSC Civ 146* with respect to the use, importance and relevance of ministerial directives. *Wilshire J* at paragraph 73 held that "*The HAJ was indeed bound to comply with these guidelines by the Ministry of Transport, Works and Housing to ensure that the directives in the Circular are followed.*"
12. The Company, having paid the required notice fulfilled its obligations under the contract. It is the Company's submission that the Labour Relations and Industrial Disputes Act (LRIDA) does not contemplate the need for engaging 'the procedure'" when the employment is terminated with notice. Termination with notice is contemplated under the Employment (Termination and Redundancy Payments) Act.
13. The Company submitted that the termination of Mrs. Mohammed-Wilson was not due to any alleged misconduct or any issues relating to her job performance so therefore the disciplinary procedures outlined in Section 22 of the Labour Relations Code are not relevant to the issue.
14. The termination of the services of Mrs. Mohammed-Wilson was done with dignity and with due consideration of her human feelings. If the Tribunal finds that the termination is unjustified then pursuant to Section 12 (5) (c) of the Labour Relations Industrial Disputes Act there are options including compensation. The Company submitted that the Tribunal is expected to be reasonable

in exercising its discretion and take into consideration the fact that Mrs. Mohammed-Wilson was paid gratuity for the period September 1, 2017 – April 10, 2019. This, the Company claimed was not due to her, as gratuity is a performance based benefit. She was paid in lieu of notice and if the termination is deemed unjustified this should be taken into account as it would not be an entitlement. They asked that the Tribunal take into consideration the fact that Mrs. Mohammed-Wilson was fully employed by her husband and that she is highly qualified and is not seeking full time 9:00 a.m. – 5:00 p.m. employment.

THE DISMISSED WORKER'S CASE:

15. Mrs. Mohammed-Wilson was employed to Jamaica Urban Transit Company Limited in the position of Manager, Service Planning. The employment contract was for a period of three (3) years commencing on September 1, 2017 and expired on August 31, 2020. The contract included a probationary period which she successfully completed and was confirmed to the position effective December 2017. In 2018, Mrs. Mohammed-Wilson applied for a vacant position of Deputy Managing Director of Operations and was successful in her application for the position. She assumed this position effective May 1, 2018. The letter of appointment dated April 3, 2018 indicated that all terms and conditions remained the same except that she would be receiving a salary increase and would now report directly to the Managing Director. Approximately 80 % of the staff of JUTC reported directly or indirectly to her.
16. Mrs. Mohammed-Wilson testified that, she has been involved in the transportation industry for approximately thirteen (13) years; eleven (11) of which were spent at the National Works Agency. Her qualifications include inter alia a Bachelor of Science Degree with Honours in Urban & Regional Planning, a Master's of Science Degree in Civil Engineering, Transportation Planning and Policy as well as numerous post graduate training to include certifications in Project Management and Logistics Technology. She is also a member of several organizations relating to her discipline in the transportation sector.
17. On August 21, 2018, her performance assessment was done by her immediate supervisor, Mr. Paul Abrahams, Managing Director of the Company. She scored an overall grade of 4 from a grading system where an individual can score the highest grade of 5 and the lowest grade of 1. According to the grading system, for a grade 4 she:

“Exceeds Expectation – Performance frequently above the standard required for the position”.

The comment on the evaluation form by Mr. Abrahams, Managing Director was that:

“Mrs. Mohammed-Wilson has so far demonstrated that she has the requisite skills to carry out her functions. A further review will be conducted at six (6) months.”

18. She testified that a member of staff who reported to her and was at the time a Fuel Control Officer was not qualified for the position as his performance was unsatisfactory. He was evaluated by her on two (2) occasions and he failed both times. This resulted in a friction between them. He once went to her office and angrily questioned her as to why he failed his review and she explained the reasons for his failure.
19. As a result of the friction between them, he was reassigned to the Portmore Depot by the Managing Director for cross training as a Junior Manager. This reassignment she said would amount to him being promoted even though his performance was unsatisfactory. With this reassignment the employee would now report indirectly to her for which the employee was not pleased. It is her evidence that this said member of staff was very vocal about his political affiliation.
20. Mrs. Mohammed-Wilson in cross examination testified that at no time did this member of staff threaten and or abuse her. Her evidence was that this staff member had to undergo assessments just like any other worker. Mrs. Mohammed-Wilson further testified that the same member of staff said he was going to get her out of the job. However, when asked if she was personally told by the individual, her response was *“he didn’t say it to me, we haven’t spoken since.”*
21. Mrs. Mohammed-Wilson’s assessment of the circumstances surrounding her termination is that this member of staff had something to do with it as it was the only plausible explanation as to why she was terminated. She said she was called into Mr. Abrahams’ office and she did not think this was unusual as she would be called periodically to discuss issues relating to the organization. On this occasion however, Mr. Abrahams said *“I will have to terminate your contract”*. She received a letter dated April 10, 2019 terminating her contract of employment with immediate effect. She pressed Mr. Abrahams for at least fifteen (15) minutes as to the reason for her termination but he said he could not tell her.

22. Mrs. Mohammed-Wilson was shocked by the termination and to date has never been told the reason. In recalling her termination in April 2019, she stated that it still impacted on her emotionally as *"it was not a good feeling."* She left the office before lunch time because the experience was humiliating and she did not want to face anyone in her office having gone through this experience. She said the notice that was circulated by the Company after her termination indicated that she had *"demitted office"*. This was not correct as the definition for the word *"demit"* would indicate that she had resigned her position and this was not the case.
23. Subsequent to her termination, she made attempts to obtain gainful employment but was unsuccessful and was only doing some ad hoc, part time work for her husband. The transportation industry she said is a specialized field and as a result the practitioners are known to each other. Her termination would therefore have travelled quickly especially through the JUTC's parent Ministry. This was evident as persons started calling to enquire of her what she did, as if the termination was her fault. She cited a potential opportunity that arose in Barbados but was advised that due to her termination she would not be considered for the job.
24. Mrs. Mohammed-Wilson contended that:
- a) although Section 15.0 of the relevant employment contract provides for termination by way of notice this Section did not relieve JUTC of the obligation to provide a reason,
 - b) the failure of JUTC to provide a reason for the termination was unreasonable, unfair, undignified and demonstrated scant regard for her and the position she held,
 - c) she did not commit any act of misconduct or any act which could justify her termination.
 - d) JUTC at no time complained about her performance and neither did the Company at any time accuse her of any act or omission which could justify summary termination,
 - e) the termination of her contract of employment was unjustifiable especially considering her performance and promotion prior to the termination,
 - f) the termination offends the provision of the Labour Relations and Industrial Disputes Act and/or the Labour Relations Code,
 - g) the termination of her contract of employment is incongruous with reasonable, fair established labour relations
 - h) the manner in which the termination was done has sullied her reputation and affects her prospects of future employment.

25. Mrs. Mohammed-Wilson is not seeking re-instatement as her contract would have expired. She is requesting an Award in the sum of eighty million dollars (\$80,000,000.00) or in the event the Tribunal finds no favour with the proposed sum, to consider an Award to include all emoluments and benefits to which she was entitled had her employment not been terminated prematurely effective from the date of her termination to the expiry of the contractually agreed fixed term.

THE TRIBUNAL'S FINDINGS:

26. The issues for the Tribunal to determine are:

1. was the influence of a Member of Staff the reason for Mrs. Mohammed-Wilson's termination?
2. what is the effect and relevance of the Ministry of Finance and Planning Circular No.15?
3. was the termination of Mrs. Mohammed-Wilson's contract of employment justified?

27. In relation to question (1) Mrs. Mohammed-Wilson is of the opinion that she was terminated because of a friction between herself and a member of staff who spoke of his political affiliation, however, there is no evidence before the Tribunal to substantiate this claim.

28. In relation to question (2) above, the evidence before the Tribunal is that Mrs. Mohammed-Wilson was terminated in accordance with Section 15.0 /15:1 of the Contract of her Employment which states:

"15.0 NOTICE

15.1 Your employment may be terminated by:

- (a) Either party giving to the other three months' notice in writing or such longer period as may be stipulated by Section 3 of The Employment (Termination and Redundancy Payments) Act or any amendment thereto or substitution thereof, or in our case, salary in lieu of notice.*
- (b) Payment of salary in lieu of all or any portions of the notice period, in substitution for the notice required above."*

29. This, the Company said was in accordance with the Ministry of Finance & Planning Circular No.15, dated May 8, 2012. However, the Tribunal is of the view that what is stated in Mrs. Mohammed-Wilson's contract of employment does not fully encapsulate what is set out in the Ministry of Finance & Planning Circular, Clause 8, which states:

(i) Termination “without cause”

A contract may be terminated prior to the agreed expiration date by either party giving notice, or by the Employer paying the Contract Officer salary in lieu of notice. Notice period should be in accordance with the following rules:

One (1) year contract - two (2) weeks notice

Two (2) year contract - one (1) month notice

Contracts of three (3) or more years - three (3) months notice

30. The Company contends that Mrs. Mohammed-Wilson was terminated in keeping with the *Ministry of Finance Circular No. 15 dated May 8, 2012*. It is their submission that she was terminated *without cause*. However, there is nothing in her contract of employment that speaks to *termination without cause*.
31. The fact that the above Clause states that a contract may be terminated prior to the agreed expiration date by either party giving notice or the Employer paying the Contract Officer salary in lieu of notice does not mean that a person’s job should be treated as an article of trade.
32. The Tribunal finds it most appropriate to refer to:
1. *R v Minister of Labour and Employment, the Industrial Disputes Tribunal, Devon Barrett, Lionel Henry and Lloyd Dawkins ex parte West Indies Yeast Co. Ltd [1985 22 JLR 407] where Smith, C.J. said:*
“Finally, in essence, (unfair dismissal) differs from the common law in that it permits tribunals to review the reasons for the dismissal. It is not enough that the employer abides by the contract. If he terminates in breach of the Act, even if it is a lawful termination at common law, the dismissal will be unfair. So the Act questions the exercise of managerial prerogative in a far more fundamental way than the common law could do.”
 2. *Village Resorts Ltd v. The Industrial Disputes Tribunal and Uton Green representing the Grand Lido Negril Staff Association [1998 35 JLR 292] where Justice Rattray made reference to Smith C. J’s quote in the R v Minister of Labour and Employment,*

from the learned author of unfair dismissal at paragraph 11:

“... A person’s job can no longer be treated purely as a contractual right which the employers can terminate by giving the appropriate contractual notice.”

33. In relation to paragraph 26 (3) above, there is no evidence that Mrs. Mohammed-Wilson was terminated for misconduct or poor performance. The evidence before this Tribunal is that Mrs. Mohammed-Wilson was called to Mr. Paul Abrahams’ office on April 10, 2019 and was handed a termination letter with immediate effect. No reason was given for her termination.

34. Termination without a reason is arbitrary and not consistent with the provisions of the Labour Relations Code. The Labour Relations Code states in Section 2 that:

“... Recognition is given to the fact that management in its exercise of its functions needs to use its resources (material and human) efficiently. Recognition is also to be given to the fact that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it, ensuring continuity of employment, security of earnings and job satisfaction.”

35. The purpose of the Labour Relations and Industrial Disputes Act and the Labour Relations Code is to promote good labour relations which include (inter alia) the principle of developing and maintaining good personnel management techniques designed to secure effective co-operation between workers and their employers and to protect workers and employers against unfair labour practices.

36. Mrs. Selena Mohammed-Wilson was not afforded the dignity to which she had a right. There must be due regard to fairness of the termination of a person’s employment.

37. The Tribunal finds that the manner in which Mrs. Mohammed-Wilson’s termination was carried out by the Company demonstrated very little if any concern for her dignity and human feeling as a worker.

38. Mrs. Mohammed-Wilson did not request reinstatement but compensation as her contract of employment would have expired. It is to be noted that the Tribunal did not benefit from testimony by the Company as they chose not to call any witnesses. Mrs. Mohammed-Wilson sought

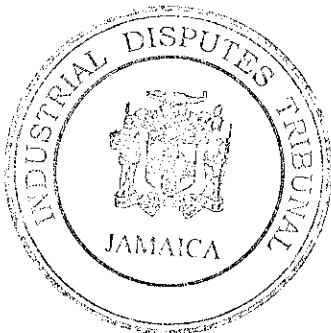
employment but was not successful. Her expertise is in a specialized area and there are insufficient places in the region to which she could apply and be favourably considered. Since her termination, she has not been gainfully employed but has assisted her husband with some ad hoc contracts. The Tribunal is of the view that the manner in which Mrs. Mohammed-Wilson's termination was done would adversely affect her prospects of future employment.

39. Based on the foregoing the Tribunal concludes that the termination of Mrs. Mohammed-Wilson's contract of employment was unfair and unjust and therefore render the termination unjustifiable. The Tribunal therefore awards accordingly:

THE AWARD:

40. In accordance with the provisions of Section 12 (5) (c) of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Mrs. Selena Mohammed-Wilson be compensated in the amount of eleven million six hundred thousand dollars (\$11,600,000.00) for her unjustifiable dismissal.

DATED THIS th 5 DAY OF AUGUST 2021



Justice Marjorie Cole-Smith (Retd.)
Chairman

Jacqueline Irons, J.P.
Member

Chelsie Shellie-Vernon
Member

Witness:

Royette Creary (Miss)
Secretary to the Division