

INDUSTRIAL DISPUTES TRIBUNAL
Dispute No.: IDT 13/2020

SETTLEMENT OF DISPUTE

BETWEEN

MASTER MACK ENTERPRISES

AND

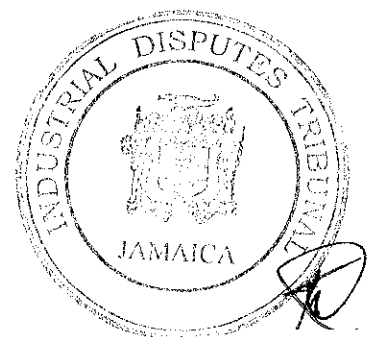
MR. JERMAINE WATSON

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	CHAIRMAN
MRS. JACQUELINE IRONS, JP	-	MEMBER
MRS. CHELSIE SHELLIE VERNON	-	MEMBER

NOVEMBER 30 2021



INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**MASTER MACK ENTERPRISES
(THE COMPANY)**

AND

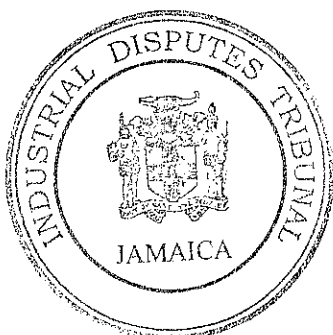
**MR. JERMAINE WATSON
(THE AGGRIEVED WORKER)**

REFERENCE:

By letter dated July 17, 2020, the Honourable Minister of Labour and Social Security, in accordance with Section 11A (1) (a) (i) 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 Master Mack Enterprises on the one hand, and Mr. Jermaine Watson on the other hand, over the termination of his Employment."



DIVISION:

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

Mr. Charles Jones, CD, JP	-	Chairman
Mrs. Jacqueline Irons, JP	-	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:

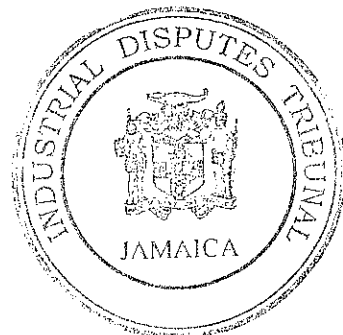
Mr. Arthur Grant	-	Industrial Relations Consultant
Mrs. Wendy McMaster	-	Managing Director

The **Aggrieved** was represented by:

Mr. Garfield Harvey	-	3 rd Vice President, UAWU
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In attendance was:

Mr. Jermaine Watson	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties and oral submissions made during seventeen (17) sittings held between October 27, 2020 and November 24, 2021.

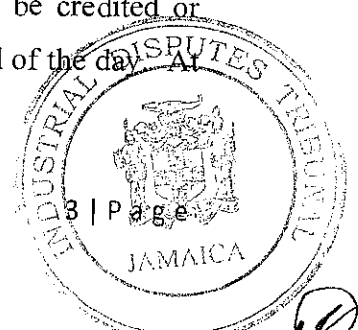
BACKGROUND TO THE DISPUTE:

1. Master Mack Enterprises is a Wholesale and Retail Food Establishment with registered offices at 105-111 Orange Street, Kingston. Mr. Jermaine Watson who was employed as a Counter Clerk was dismissed with effect from October 29, 2016. Mr. Watson claimed that his dismissal was not justified and in an effort to seek redress he engaged the services of Mr. Garfield Harvey, Industrial Relations Consultant to represent him. Efforts by the Ministry of Labour and Social Security to resolve this matter was not successful and consequently the

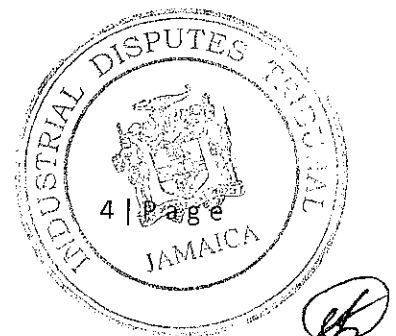
Honourable Minister of Labour and Social Security referred the matter to Industrial Disputes Tribunal for determination and settlement.

CASE FOR THE COMPANY:

2. Mr. Arthur Grant, Industrial Relations Consultant who represented the Company, in his opening address stated that the Company had not arrived at the decision to terminate Mr. Watson's services in haste, and in fact had taken all the necessary steps to give Mr. Watson an opportunity to respond to the allegations made against him.
3. He stated that Mr. Watson was invited to a disciplinary hearing on August 25, 2016 and was allowed to bring a representative. In closing he said that Mr. Watson had contributed significantly to his dismissal, having breached the trust and confidence that the Company had placed in him as an employee.
4. The Company called three (3) witnesses, namely, Mrs. Wendy McMaster, Director, Miss Leanne McMaster, Assistant Floor Supervisor and Mrs. Thracia Campbell-Henry, Store Manager.
5. The first witness called was Mrs. Wendy McMaster, who stated that she was a Director of the Company and the Manager of the Human Resource Unit. She testified that the Company was in the Wholesale and Retail business, selling meat and groceries, with the Head Office located at 105-111 Orange Street in Kingston. Her husband, Mr. Raymond McMaster was the other Director, and the Company had fourteen (14) locations island wide. The Company operated between the hours of 8:00 a.m. and 6:00 p.m. on Mondays to Saturdays.
6. She then explained the procedure for members of staff to purchase goods on credit. A request would be made to the Manager or supervisor to approve their credit. If this was approved the staff member would proceed to the cashier with the items to be credited or cashed. The goods would be packed and checked off when leaving at the end of the day. At that time the bill would then be verified and signed by the Supervisor.



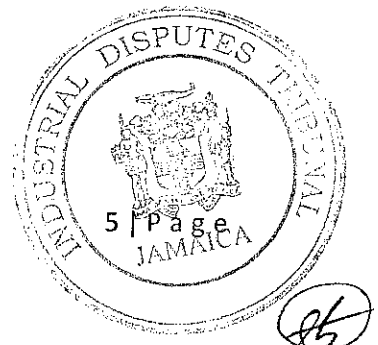
7. She outlined that Mr. Watson would report to a supervisor, as well as a general supervisor of the location. Mrs. Sharon Chin was one of the supervisors, and Mrs. Thracia Campbell-Henry was the Manager in Charge.
8. On Saturday, June 25, 2016, she observed that Mrs. Sharon Chin was checking the trolleys. The counter in the store was the final place where goods were checked and the bills signed by the supervisor before exiting the building.
9. When the trolleys were packed they were transported to the car park. Mrs. McMaster went to the area where the trolleys and flatbed were parked and enquired whose goods were placed there. She was informed that they belonged to certain members of staff, including Jermaine Watson. She asked for the relevant bills for the goods and questioned who would have checked the goods and was told that Mrs. Sharon Chin was the checker. Mr. Watson was unable to find some of his bills and expressed the desire to go back inside to get a reprint of the relevant bill from the cashier.
10. The second witness called was Miss Leanne McMaster who testified that she was asked to check Mr. Watson's goods against his bills. She found that he had one (1) cash bill and two (2) credit bills with the final bill being processed at 8:12 p.m. She had indicated to Mr. Watson that the Serge Island milk was not on any of the bills presented by him. He again went to Mrs. Chin to obtain a reprint and returned with a relevant credit bill which was processed at 8:20 p.m. She further testified that Mr. Watson was told that he could not leave the compound without writing a report of this incident, which he did before leaving with his goods.
11. The third witness, Mrs. Thracia Campbell confirmed the procedure for staff purchases from the Company. She confirmed that Mr. Watson had used the procedure many times and was therefore familiar with the process.



12. The hearing was chaired by Mr. Kirk Hill, the then HR Manager, and Mr. Watson was represented by Mr. Garfield Harvey, Industrial Relations Consultant.
13. On October 29, 2016, Mr. Watson was issued with a letter of dismissal signed by Mr. Hill which stated that the disciplinary panel had found him guilty of the charge of "... unauthorised use or possession of Company property, or the property of a fellow employee..." in keeping with Rule 38 of the Company's Disciplinary Schedule.

CASE FOR THE AGGRIEVED:

14. Mr. Garfield Harvey, Industrial Relations Consultant, representing Mr. Watson stated in his opening remarks that through oral and written evidence he aimed to prove that the process used by Master Mack Enterprises to dismiss Mr. Watson lacked fairness as the charges against him were not properly laid and proven. Mr. Watson, he said maintained that he had done nothing or removed anything for the Company that would warrant his dismissal.
15. Mr. Harvey called two witnesses, Ms. Delrose Holgate, Assistant General Secretary of the UAWU and Mr. Jermaine Watson the Aggrieved worker.
16. Ms. Holgate testified that the charge laid against Mr. Watson was for the unauthorized use or possession of the property of the Company or the property of a fellow employee and that no evidence was produced by the Company to prove these charges as Mr. Watson had paid for the goods.
17. She further testified that the hearing was chaired by Mr. Kirk Hill, Human Resource Manager who had written to Mr. Watson on October 29, 2016 advising that a decision had been concluded in regards to the disciplinary hearing and the panel's deliberation and based on the evidence found Mr. Watson guilty of the charge and that the applicable penalty was immediate termination of Mr. Watson's services.

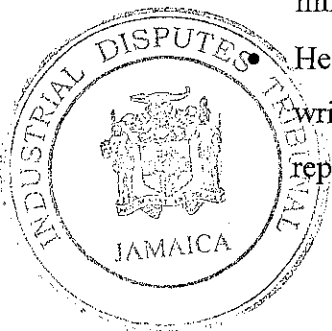


18. The UAWU had appealed Mr. Watson's dismissal but was unsuccessful in their bid to have him reinstated in his position.

19. Mr. Jermaine Watson testified as follows:

- He had been working with Master Mack Enterprises since the beginning of May or June 2008 until his dismissal on June 25, 2015. His position was that of Meat Counter Clerk (Server). He had no written contract but recalled being administered a literacy test and told that his working hours were from 8:30 a.m. to 5:30 p.m. daily.
- During his tenure he was never charged with any disciplinary matters prior to the event of June 25, 2015.
- After being employed for approximately one (1) year, he was afforded the opportunity to buy (cash) and credit goods from the Company. He utilized both methods to make his purchases.
- In order to access credit, permission would be given by his supervisor who would record the credited items and the cashier would then cash the goods and the bill for collection and goods would reflect that it was a credit. All employees had a credit limit. If the credit limit was exceeded the system would block the account and this would necessitate going to the Manager to reinstate the Account.
- On June 25, 2015, when he was about to leave for home, Mrs. Wendy McMaster approached a group of workers who had made purchases on that day and told them, himself included, that all bags needed to be checked. The goods at the time were outside the building on a flat bed and he identified the goods that belonged to him.
- The check revealed that a litre of Serge Island milk that was among his purchases was not accounted for. He was asked to produce the bill but was unable at the time to find it. He was then told to go back inside and record the milk purchased. He produced two other bills for purchases made during the course of the day but was unable to find the other bills for goods. He returned to the store and produced a credit bill for the milk.

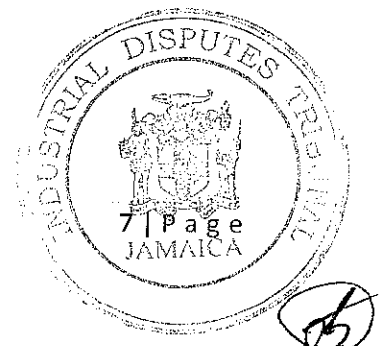
He was then instructed by Mrs. McMasters to go to her office where he was told to write a report on the unaccounted for item, which he did and had given to her. The report was completed at almost midnight and he was 'bullied' into writing the report.



- The persons who checked his bag was Miss Leanna McMaster and her only issue was with the one litre of milk
 - He expressed that he would not wish to return to work with the Company
20. Under cross examination, Mr. Watson testified that approximately two (2) months after leaving Master Mack Enterprises he was employed to Sampar's Cash & Carry for a period of approximately one year - on and off. He was self- employed since that time.
21. He had recalled seeing a copy of the Company's Safety Rules and admitted to receiving a warning letter in 2013 for habitual lateness.
22. It was the evidence of both witnesses that at the hearing held on August 25, 2016 and August 29, 2016, Mr. Watson had declared that he had in fact informed his Supervisor, Mrs. Chin that he was making a purchase of 1.5 litre of milk on credit as he had every intention of paying for the goods by deduction from his wages, which was usual. To the best of his knowledge Mrs. Chin had noted the item in the credit book, but later stated that she had omitted to record it.
23. At the hearing, Mrs. Wendy McMaster, who was the Accuser, and also a witness to the proceedings, had introduced new allegations of Mr. Watson being in possession of meat items that were unaccounted for. There was no such allegation in her written report. The focus of the hearing was therefore the unaccounted for milk.

TRIBUNAL'S DELIBERATIONS:

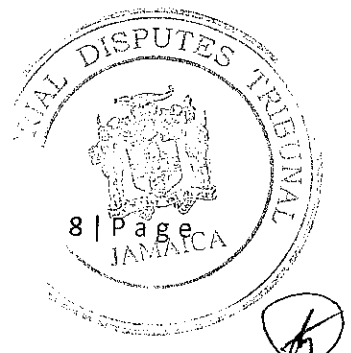
24. Members agreed that the Company had adhered to the Labour Relations Code in relation to granting to the worker the right to be heard and to have a representative of his choice. However, Members noted the various roles played by Mrs. Wendy McMasters, as accuser and witness and that she also co-chaired the disciplinary hearing.



25. The Tribunal was of the view that the Company had given sufficient time for the case of the Aggrieved to properly prepared.
26. Members noted that although the Union had produced a letter of appeal by Mr. Watson against his dismissal, there was no evidence that it was received by the Company as they insisted that they had not received that letter.
27. Members also noted that the letter of dismissal was signed by Mr. Kirk Hill, Chairman of the disciplinary hearing. The termination letter should not have been written by anyone involved in the disciplinary hearing.
28. Members agreed that Mr. Watson had in fact contributed to his dismissal by not doing due diligence to ensure that all goods were properly accounted for prior to taking possession; and that there were bills or receipts to provide verification of the purchases.
29. The Tribunal noted that Mr. Jermaine Watson was not desirous of being considered for reinstatement, should the ruling be in his favour.

TRIBUNAL'S FINDINGS:

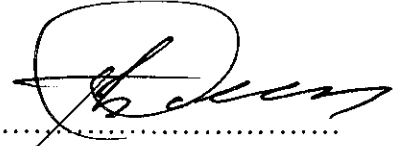
30. The Tribunal noted the following:
- i. The various roles played by Mrs. Wendy McMaster in the process. She was the accuser and a member of the panel hearing the matter.
 - ii. Mr. Kirk Hill, Chairman of the disciplinary hearing had signed the letter of dismissal.
31. It is for these reasons and guided by the Rules of Natural Justice that the Tribunal concluded that the disciplinary process engaged by the Master Mack Enterprises against Mr. Jermaine Watson was flawed, thereby rendering the termination of his services unjustifiable.



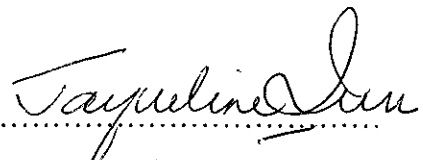
AWARD:

32. It is the Tribunal awards that Mr. Jermaine Watson be paid the amount of One Hundred and Twenty Eight Thousand Dollars (\$128,000) as compensation for his dismissal.

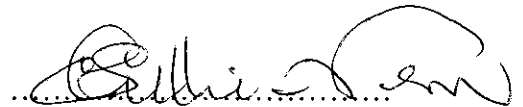
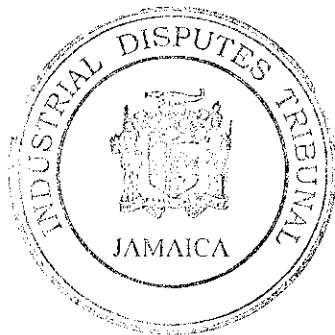
DATED THIS 30th DAY OF NOVEMBER 2021.



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Mr. Charles Jones, C.D. J.P.
Chairman

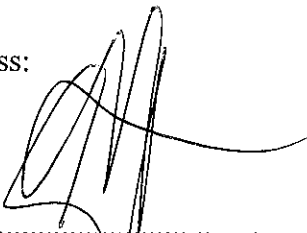


.....
Mrs. Jacqueline Irons, J.P.
Member



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Mrs. Chelsie Shellie Vernon
Member

Witness:



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Mr. Gary Lediard, J.P.
Secretary to the Division