

# **INDUSTRIAL DISPUTES TRIBUNAL**

**Dispute No: IDT 24/2017**

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## **SETTLEMENT OF DISPUTE**

**BETWEEN**

**NORTH EAST REGIONAL HEALTH AUTHORITY  
(N.E.R.H.A.)**

**AND**

**MISS YAISHA THOMAS**

***AWARD***

**I.D.T. DIVISION**

|                                     |                   |
|-------------------------------------|-------------------|
| <b>MISS MARSHA SMITH</b>            | <b>- CHAIRMAN</b> |
| <b>MR. ERROL BECKFORD</b>           | <b>- MEMBER</b>   |
| <b>MRS. CHELSIE SHELLIE-VERNON-</b> | <b>MEMBER</b>     |

**MARCH , 2020**



*MS*

**IDT 24/2017**

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**NORTH EAST REGIONAL HEALTH AUTHORITY (N.E.R.H.A.)  
(THE COMPANY)**

**AND**

**MS. YAISHA THOMAS  
(THE AGGRIEVED)**

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**REFERENCE**

By letter dated May 4, 2017 the Honourable Minister of Labour and Social Security in accordance with Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein: -

The Terms of Reference were as follows:

*"To determine and settle the dispute between the North East Regional Health Authority (N.E.R.H.A.) on the one hand and Yaisha Thomas on the other hand over the termination of her employment."*



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## **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:

- |                             |   |                                |
|-----------------------------|---|--------------------------------|
| Ms. Marsha Smith            | - | Chairman                       |
| Mr. Errol Beckford          | - | Member, Section 8(2) (c) (ii)  |
| Mrs. Chelsie Shellie-Vernon | - | Member, Section 8(2) (c) (iii) |

Mr. D. Trevor McNish, Member of the Division hearing this dispute, died on July 25, 2019. The parties agreed for the proceedings to continue with Mrs. Chelsie Shellie-Vernon, being appointed Member of the panel in accordance with Section 8(4) of the Labour Relations and Industrial Disputes Act which provides as follows:

*“8(4) Where three members of the Tribunal constitute a division thereof and any one of those members dies or is incapacitated or ceases to be a member thereof for any other reason after the division begins to deal with the industrial dispute in relation to which it was constituted but before it has made its award, another person shall be selected in accordance with the provisions of paragraph (c) of subsection (2) to fill the vacancy; thereafter the proceedings of the division shall be begun de novo unless all the parties to the dispute agree in writing that those proceedings may be continued as if they had not been interrupted by reason of such death or incapacity or cessation.”*

## **REPRESENTATIVES OF THE PARTIES:**

The **Company** was represented by:

- |                                         |   |                                              |
|-----------------------------------------|---|----------------------------------------------|
| Mrs. Natalie Irwin-Carby                | - | Attorney-at-Law                              |
| Ms. Sejae Burrey                        | - | Industrial Relations Manager & Staff Welfare |
| In attendance was:<br>Mrs. Nyekah Adams | - | Regional Personnel Manager (acting)          |



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The **Aggrieved Worker** was represented by:

Mr. Howard Duncan - Industrial Relations Consultant

In attendance was:

Ms. Yaisha Thomas - Aggrieved Worker

### **SUBMISSIONS AND SITTINGS:**

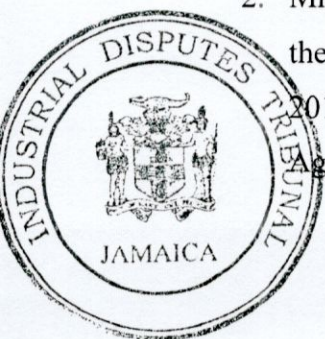
Briefs were submitted by both parties who made oral submissions during ten (10) sittings held between October 24, 2017 and June 6, 2019.

### **BACKGROUND TO THE DISPUTE:**

1. The North East Regional Health Authority (N.E.R.H.A.) (*hereinafter referred to as the Company*) is a statutory body established under the National Health Service Act. It has responsibility for the operation and management of health services within the parishes of St. Ann, St. Mary and Portland. Ms. Yaisha Thomas (*hereinafter referred to as the Aggrieved Worker*) was employed to the Company on July 5, 2010 as a Community Health Aide. By way of letter dated July 16, 2014 the Aggrieved Worker was charged with the offence of fighting whilst on duty or on the premises in breach of the Company's Human Resource Manual Disciplinary Code #10. A disciplinary hearing was held on July 9, 2015. By way of letter dated July 24, 2015 the Aggrieved Worker's employment was terminated. The Aggrieved Worker appealed the termination of her employment by way of letter dated July 28, 2015. Thereafter the Aggrieved Worker protested her termination and sought the assistance and intervention of the Ministry of Labour and Social Security in the dispute between herself and the Company. No resolution was reached, and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

### **THE COMPANY'S CASE:**

2. Mrs. Lorna Mighty, Human Resources Officer employed to the Company and assigned to the St. Mary Health Department was the Company's sole witness. She recalled July 9, 2019 when a hearing was held at the Company's Regional Office in Ocho Rios for the Aggrieved Worker. She was invited to be a panelist at the hearing. The panel was asked





to consider the issue of a fight which took place at Castleton Health Centre. The purpose of the panel was to examine the evidence given, deliberate and make a report. Before the hearing the panel received copies of the Aggrieved Worker report, witness reports and the letter outlining the charges. The charge was that a fight occurred at a health centre.

There was an opening statement by the Chairman who presided over the entire process. The Chairman was Mrs. Toby, a retired judge, the other members were Mrs. Housen (Retired Midwife), Paulette Longcar (Retired Director of Nursing Services) and herself. She said the process of the hearing was an opening statement, the persons present were introduced, witnesses were called then questioning and cross examination took place. The introduction was done by Mrs. Gloria Fenton Rose, the Company's Director of Human Resource Management & Industrial Relations. The persons who gave evidence were Mrs. Myrtle Spence, Community Health Aide, Ms. Kadian Walker and the Aggrieved Worker. There was one sitting at which a stenographer was present. After all the evidence the Chairman of the disciplinary panel wrapped up the proceedings and said it was for the panel to deliberate and make a decision as to the proceedings.

3. At the deliberations less than a week later, the panel examined all that was put forth and came to a decision. The outcome of the deliberations was that the Aggrieved Worker was guilty of fighting on the job and that she should be dismissed. The panel came to that decision based on the evidence given and in keeping with the company's policy and procedure. The panel was convinced that a fight on the job took place that warranted dismissal. The panel was convinced by the Aggrieved Worker's own report which outlined what happened at the health centre, the evidence given and the cross-examination.
4. She said that the Aggrieved Worker's oral evidence did not match the evidence given in her written report. Her initial report mentioned that she asked Kadian Walker why she was calling out her name and Kadian Walker hit her and then she punched Kadian Walker. At the hearing the Aggrieved Worker said she asked Kadian Walker three times why she was calling out her name and that Kadian Walker kicked her and then the persons in the health centre rushed to restrain Kadian Walker. The Aggrieved Worker was not too sure anymore if she had punched Ms. Walker. Mrs. Myrtle Spence gave evidence at the hearing that she did not see fight but that she heard furniture moving. She



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and other persons rushed in and went between the Aggrieved Worker and Ms. Walker to part them. Kadian Walker was reluctant to give evidence at the hearing owing to the fact she was related to the Aggrieved Worker. At the hearing Kadian Walker said that she hit the Aggrieved Worker and that she did not want the Aggrieved Worker to lose her job.

5. Mrs. Mighty said that in her assessment, the hearing on July 9, 2015 was fair because:
  - (1) Witnesses were called.
  - (2) Both parties, Mr. Duncan and Counsel were able to cross-examine them.
  - (3) A chair presided over the matter.
  - (4) The persons who made up the panel were persons who were not present when the incident took place.
6. During cross examination she restated that in her assessment the hearing was fair. The decision to terminate was not made the same day as the hearing. She did not recall speaking with the Aggrieved Worker after the hearing. She said she had seen Kadian Walker's report before and agreed that there was nothing in the report that the Aggrieved Worker hit Kadian Walker. She recalled that at the hearing Kadian Walker said that she hit the Aggrieved Worker. She said the basis on which the panel found there was a fight was the report the Aggrieved Worker wrote and based on the evidence of Mrs. Spence. The Aggrieved Worker said at the hearing that when Kadian Walker came into the health centre, she went to Kadian Walker and asked her why she was calling up her name. The Aggrieved Worker was an employee and she instigated a fuss that turned out to what it became. Aggrieved Worker's statement stated that she punched Kadian Walker. It was the decision of the disciplinary panel that a fight took place. Mrs. Spence gave evidence of a commotion between the Aggrieved Worker and Kadian Walker. For someone to go between two persons meant that she was parting something.
7. During the Company's case the witness statement of Kadian Walker dated February 2, 2015 was admitted as Exhibit 1.

#### **THE COMPANY'S CONTENTIONS:**

8. The Aggrieved Worker was a participant in a fight which was in breach of Disciplinary Code # 10 of the Authority's Human Resources Policies and Procedures Manual and in contravention of Provision 4 (2) (3) of the Staff Orders for the Public Service.





9. The Authority should not be disenfranchised due to the passage of time and the decision of the disciplinary panel should be upheld. It was a properly constituted panel. The evidence was heard, and the Aggrieved Worker was able to cross-examine witnesses, these are some of the tenets of a fair hearing. To ignore the decision of the panel would vitiate the panel and inevitably the disciplinary proceedings of the Authority which were guided by well established principles of law and policy as well as the Staff Order for the Public Service and the Public Service Regulations.

#### **THE AGGRIEVED WORKER'S CASE:**

10. The Aggrieved Worker testified that she was employed to the Castleton Health Centre, St Mary in July 2010 as a Community Health Aide. She denied hitting Kadian Walker on June 13, 2014. She said Kadian Walker hit her that day. The matter was before Court but that it was dismissed. She received a letter from the Company with charges to attend a hearing. The charge was for fighting on the job. She insisted that she did not fight whilst on duty or on her work premises. She said that Kadian Walker gave evidence at the disciplinary hearing that she (Aggrieved Worker) did not hit her (Kadian Walker). It was pointed out to her that her report stated, ***"she lifted her foot and stamped me, so I punched her."*** She agreed that was what her report said but she said that she made a correction at the hearing. It was a wrong choice of words. She had to write the letter immediately. It was an error. She did another report but when she tried to submit it, she was told "No". She was asked if Myrtle Spence parted her and Kadian Walker. She did not know if part was the word to use. After Kadian Walker kicked her, Mrs. Spence jumped between her and Kadian Walker. Patients just rushed between them. She just knew that Mrs. Spence came between she and Kadian Walker. She denied that she and Kadian Walker were hugging up and that she was the instigator of the fight.
11. She said that at the disciplinary hearing four persons gave evidence, Mrs. Spence, Nurse James, Kadian Walker and herself. She said Mrs. Spence did not testify at the hearing that she saw her hit Kadian Walker. Nurse James did not testify that she saw the incident. At the disciplinary hearing she did not testify that she hit Kadian Walker. Kadian Walker did not say at the hearing that the Aggrieved Worker hit her. She therefore, did not agree with Mrs. Mighty's conclusion. She said she was represented at





the hearing by Mr. Howard Duncan. She requested an appeal, but no appeal hearing had been held. She said she would be glad to go back to work. She believed that she was not fairly dealt with.

12. During cross examination she said she provided a report to the Company. She agreed that when Kadian Walker came in the Castleton Health Centre she was a patient. She said that Kadian Walker's mother and her mother grew up together and that they were close family friends. She agreed that Mrs. Spence went between her and Kadian Walker. She said Kadian Walker kicked her while she was doing Kadian Walker's blood pressure and that was when she staggered back, and Mrs. Spence came between them.
13. When questioned by the panel she indicated that she did not want an appeal hearing anymore.

During the examination of the Aggrieved Worker the following documents were admitted as exhibits.

- Exhibit 2 – Charge letter dated July 16, 2014
- Exhibit 3 – Letter dated March 27, 2015 from Mrs. Gloria Fenton-Rose, Director of Human Resource Management & Industrial Relations, NERHA to the Clerk of Courts Port Maria Magistrate's Court requesting an update on the court case against the Aggrieved Worker before the Port Maria Resident Magistrate's Court for the offence of Assault Occasioning Bodily Harm.
- Exhibit 4 – Letter dated April 15, 2015 from the Clerk of Courts Port Maria Resident Magistrate's Court regarding Info#1762/14 Regina v Yaisha Thomas – Charged for Assault O. B. Harm which stated inter alia, that on April 15, 2015 no evidence was offered and the matter against the accused was dismissed.
- Exhibit 5 – Letter of Termination dated July 24, 2015 from the Company to the Aggrieved Worker which stated inter alia that the Aggrieved Worker could appeal the decision within fourteen (14) days.
- Exhibit 6 – Letter appealing the termination of the Aggrieved Worker's employment dated July 28, 2015 prepared by her representative, Mr. Howard Duncan, Industrial Relations Consultant.
- Exhibit 7 – Written report prepared by the Aggrieved Worker dated June 13, 2014.





### **THE AGGRIEVED WORKER'S CONTENTIONS:**

14. There was a no fight. There being no fight, no offence was committed. On what basis then could one argue that the hearing was fair and proper. There was no offence committed by the Aggrieved Worker and the Tribunal therefore has to find that the Aggrieved Worker was unjustifiably terminated, and she should be reinstated in her employment.
15. An appeal is a fundamental protection that the Aggrieved Worker has against her termination. No appeal was held.

### **THE TRIBUNAL'S FINDINGS & RESPONSE:**

16. The Tribunal in arriving at its findings took note of all the evidence both documentary and oral and concluded that:
  - (i) Kadian Walker attended the Castleton Health Centre on June 13, 2014 to access its services.
  - (ii) There was a fight between the Aggrieved Worker and Kadian Walker on the 13<sup>th</sup> of June 2014 whilst the Aggrieved Worker was on duty as a Community Health Aide at the Castleton Health Centre.
  - (iii) The Aggrieved Worker was charged with Assault Occasioning Bodily Harm before the Port Maria Resident Magistrate's Court. No evidence was offered against her and the charge was dismissed on the 15<sup>th</sup> of April 2015.
  - (iv) The Aggrieved Worker received a charge letter dated July 16, 2014.
  - (v) A disciplinary hearing was held on July 9, 2015.
  - (vi) At the hearing the Aggrieved Worker was accompanied by her representative, Mr. Howard Duncan and the Aggrieved Worker was given an opportunity to present her case.
  - (vii) The Disciplinary panel found that the Aggrieved Worker breached the Company's disciplinary code. Consequent on the finding of the Disciplinary panel, the Aggrieved Worker's employment was terminated by way of letter dated July 24, 2015. The said letter also set out the Aggrieved Worker's right to an appeal.
  - (viii) The Aggrieved Worker appealed her termination by way of letter dated July 28, 2015.



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- (ix) The appeal has not yet been heard.
17. In its deliberations, the Tribunal referred to Section 22 of the Labour Relations Code which deals with disciplinary procedures and Section 3 (4) of the Labour Relations and Industrial disputes Act which reads:
- “ A failure on the part of any person to observe any provision of the labour relations code which is for the time being in operation shall not of itself render him liable to any proceedings; but in any proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or a Board to be relevant to any question arising in the proceedings shall be taken into account by the Tribunal or Board in determining that question.”*
18. The evidence presented at the Tribunal shows that there was a factual basis for the disciplinary panel to have concluded that the Aggrieved Worker fought while on duty. Her written report stated that she punched Kadian Walker and the evidence before the disciplinary panel is that the Aggrieved Worker and Kadian Walker had to be parted. Even at the Tribunal the Aggrieved Worker stated that Mrs. Spence had to go between her and Kadian Walker.
19. Notwithstanding the foregoing, the Tribunal finds that the procedure that the Company followed which culminated in the termination of the Aggrieved Worker's employment for disciplinary reasons was unfair. The Company only partially complied with the requirements of Section 22 of the Labour Relations Code. Though the Aggrieved Worker received written charges, was given an opportunity to state her case and she was accompanied by her representatives, her appeal was not heard.
20. The right of appeal includes the right to have the appeal heard and a decision rendered. The Company must ensure that once an appeal is filed within the prescribed time, that steps are taken to speedily dispose of the appeal. Section 22 of the Labour Relations Code requires the disciplinary procedure including the appeal procedure to be simple and rapid. Even if an employee refers the matter to the Ministry of Labour and Social Security, it is still incumbent on the Company to ensure that the appeal procedure is completed. The process of conciliation and referral to the Tribunal cannot take the place of the appeal procedure. The fact that the process is incomplete years after the appeal was filed shows





that the process has not been rapid. It is the duty of the Company to ensure that the appeal is heard expeditiously. The Company has breached its duty to give the right of appeal and for that the reason the termination of the Aggrieved Worker's employment is unjustifiable.

21. It is also the finding of the Tribunal that the Aggrieved Worker breached Section 6 (iii) of the Labour Relations Code. The Aggrieved Worker had a special obligation to her employer as a Community Health Aide to ensure that patients were able to access the Company's services in a healthy and safe environment. She, when acting in the course of her employment should have been mindful of this obligation and should have refrained from action which conflicted with her obligation. Her involvement in a fight with a patient breached this obligation. The breach of Section 6 (iii) of the Labour Relations Code by the Aggrieved Worker was the ultimate cause of her dismissal. The Tribunal's award will take in account the Aggrieved Worker's breach of Section 6 of the Labour Relations Code. Her conduct was so egregious that reinstatement will not be considered.
22. In arriving at the award, the Tribunal has considered that the Company complied with some aspects of the Section 22 and the fact that the Aggrieved Worker was in breach of Section 6 of the Labour Relations Code.





**AWARD:**

In accordance with Section 12 (5) (c) of the Labour Relations and Industrial Disputes Act the Tribunal orders that Miss Yaisha Thomas be paid six months' salary at the rate at the date of her dismissal in full and final settlement for her unjustified dismissal.

**DATED THIS** <sup>5<sup>th</sup></sup> **DAY OF MARCH 2020.**

*Marsha Smith*

.....  
Ms. Marsha Smith  
Chairman

*[Signature]*

.....  
Mr. Errol Beckford  
Member

*Chelsie Shellie-Vernon*

.....  
Mrs. Chelsie Shellie-Vernon  
Member

Witness:

*[Signature]*  
.....  
Mr. Gary Lediard  
Secretary to the Division

