

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 5/2015

SETTLEMENT OF DISPUTE

BETWEEN

NEVEAST SUPPLIES LIMITED

AND

MISS KARMA-GAYE WILLIAMS

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, C.D., J.P. — CHAIRMAN

MR. LESLIE HALL — MEMBER

MR. DWIGHT NELSON, C.D., J.P. — MEMBER

NOVEMBER 3, 2016

IDT 5/2015

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**NEVEAST SUPPLIES LIMITED
(THE COMPANY)**

AND

**MS. KARMA-GAYE WILLIAMS
(THE AGGRIEVED WORKER)**

REFERENCE:

By letter dated February 2, 2015, which superseded letter dated January 30, 2015, the Honourable Minister of Labour and Social Security in accordance with Section 11A (1)(a)(i) of the Labour Relations and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 Neveast Supplies Limited on the one hand, and Miss Karma Gaye-Williams on the other hand, over the termination of her 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:

Mr. Charles Jones, C.D., J.P.	—	Chairman
Mr. Leslie Hall	—	Member, Section 8(2) (c) (ii)
Mr. Dwight Nelson, C.D., J.P.	—	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Mr. Trevor Cuff	—	Attorney-at-Law
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The **Aggrieved Worker** was represented by:

Mr. Howard Duncan	—	Industrial Relations Consultant
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In attendance was:

Miss Karma-Gaye Williams	—	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties and nine (9) sittings were held between November 3, 2015 and August 31, 2016.

PARTIES TO THE DISPUTE:

Neveast Supplies Limited (“**the Company**”) is a family-owned Jamaican company started in 1962 to service the country’s stationery needs. Through market penetration the Company expanded operations to include the supply of office and systems furniture.

Miss Karma-Gaye Williams (“**the Aggrieved**”) was employed to Neveast Supplies Limited on August 7, 2012 in the capacity of Account Executive. She was later appointed as In-House Sales Representative and Drawing Technician with effect from August 26, 2013.

BACKGROUND TO DISPUTE:

Miss Karma-Gaye Williams proceeded on three months’ maternity leave on January 10, 2014 to end on April 9, 2014. While she was on maternity leave she received a call on March 25, 2014 inviting her to attend a meeting at the Company. She did so on March 26, 2014 and at this meeting with the General Manager, she was handed a letter terminating her employment. She engaged Mr. Howard Duncan, Industrial Relations Consultant, to act on her behalf.

Mr. Duncan wrote to the Company appealing what he termed to be the unfair and unjustifiable termination of her employment while she was on maternity leave. The matter was reported to the Ministry of Labour and Social Security but the conciliation effort by that Ministry failed and consequently the Honourable Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal for determination and settlement.

COMPANY’S CASE:

The Company was represented by Mr. Zavia T. Mayne, Attorney-at-law, who attended the first sitting. He was subsequently replaced by Mr. Trevor Cuff, Attorney-at-law.

The Company’s contention was that there was a downturn in the economic position of the Company which resulted in a cutback in the staff complement.

Mrs. Christina East, General Manager, was called as the Company’s only witness. Mrs. East testified that Miss Williams was employed as Account Executive on August 7, 2012. Her position was later changed to In-House Sales Representative and Drawing Technician with effect from August 2, 2013. She further testified that Miss Williams had

applied for three months' leave and that on the leave application form she had indicated maternity leave.

She stated that her services were terminated with effect from March 26, 2014 due to the fact that "... economic conditions in the industry have resulted in slow sales ..."

AGGRIEVED WORKER'S CASE:

Mr. Howard Duncan, Industrial Relations Consultant contended as follows:

1. *"That the company breached the Maternity Leave Act as Miss Williams was entitled to serve the period of confinement which by law was (12 weeks) three months.*
2. *That her position was immediately advertised in the Jamaica Gleaner, thus the reason given for the company's decision (economic condition in the industry) was questionable*
3. *That there are serious consequences for breaching the Maternity Act (section 7)*
4. *That the Labour Relations Code and the principles of Natural Justice were also breached*
5. *That the right of appeal was not afforded"*

Miss Williams was called as a witness. She testified that she proceeded on maternity leave on January 10, 2014. She stated that while on maternity leave she was receiving calls from the management of the Company to do collections. On March 25, 2014, Mrs. Christina East called and requested her to come in to meet with her. This she did on March 26, 2014, when she was handed a letter of termination and was asked to exit through the back door. She further testified that she filed an appeal but no meeting was held with the Company in this regard.

In response to a question during cross examination as to whether she was aware that under the Maternity Leave Act she was required to inform the employer that she intended to return to the job. She replied that she was not aware of the Act but that she had

informed the Company that she intended to return as there was an ending date on the leave form she had completed. She said that she had also informed the Company verbally of her intention to return to her job.

Mr. Duncan requested that Miss Williams be reinstated in her job.

TRIBUNAL'S DELIBERATIONS:

The Tribunal gave careful consideration to the evidence presented and noted the manner in which Miss Williams' employment was terminated, in that while on maternity leave she was called to the workplace and presented a letter of termination of her employment.

Members examined the reason given for the termination of her employment which was that the Company was experiencing a downturn in business. However, the Tribunal's Members noted that less than two months after Miss Williams' termination, the Company was engaged in the process of advertising the position of Accounts Executive - the position to which Miss Williams was initially employed. This contradicted the reason for the termination of Miss Williams' employment.

The Members also asked themselves the question, that, if the Company was having a downturn in business, why hadn't they considered making positions redundant.

The Members in their deliberation also paid close attention to Sections 4(1) of the Maternity Leave Act which makes the following provision:

"Subject to the provision of subsections (2), (3), (4) and (5), every worker to whom maternity leave is granted shall be entitled to return to work –

(a) with the employer who granted the leave or, where appropriate, his successor;

(b) in the capacity and place in which she was employed under the original contract of employment, to do work of the nature for which she was employed under that contract of employment;

(c) on terms and conditions that, as regards seniority, pension rights and other similar rights, the period of her employment immediately prior to her absence on maternity leave shall be regarded as continuous with her employment following that absence.”

Members also examined Section 4(3) (a) and (b) of the Act which states:

- (3) *“A worker shall not be entitled under subsection (1) to return to work—*
- (a) if an order made under subsection (2) so provides; or*
 - (b) unless she serves on her employer or, where appropriate, his successor, at least three weeks before the day on which she proposes to return to work, a notice that she proposes to return to work on that day (hereafter in this Act referred to as the “notified day of return”).”*

The Tribunal accepted Miss Williams’ testimony that she had informed the Company of her intention to return to her job. This was not challenged by the Company. The Tribunal also noted that it was not provided with evidence to show that the post held by Miss Williams was made redundant.

FINDINGS:

The Tribunal did not accept the reason advanced by the Company for the termination of Miss Williams’ service and agreed that in affecting her dismissal the Company was in breach of the Maternity Leave Act.

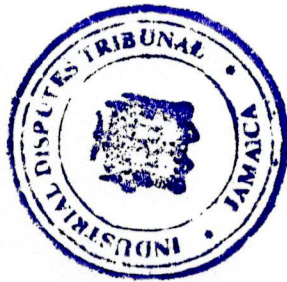
It is for these reasons that the Tribunal finds that the termination of Miss Williams’ service was unjustifiable.

AWARD:

The Tribunal after careful consideration is of the opinion that the reinstatement of Miss Williams in the position she held at Neveast Supplies Limited would not be conducive to good working relations.

The Tribunal therefore awards payment to Miss Williams in the amount of One Million Seven Hundred and Fifty Thousand Dollars (\$1,750,000.00) for the unjustifiable termination of her employment.

DATED THIS 3rd DAY OF NOVEMBER, 2016.



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

Mr. Leslie Hall
Member

Mr. Dwight Nelson, C.D., J.P.
Member

WITNESS:

Nicola Smith Marriott (Mrs.)
Secretary to the Division