

SETTLEMENT OF DISPUTE

BETWEEN

NEW ERA FINANCE LIMITED

AND

MAUREEN HASSAN

AND THE

AWARD

I.D.T. DIVISION

MR. NORMAN WRIGHT, Q.C. - CHAIRMAN

MR. RION HALL, J.P. - MEMBER

MR. D. TREVOR McNISH - MEMBER

JULY 7, 2015.

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

NEW ERA FINANCE LIMITED

AND

MAUREEN HASSAN

REFERENCE:

By letter dated November 26, 2013 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 New Era Finance Limited on the one hand and Ms. Maureen Hassan 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. Norman Wright, Q.C.	-	Chairman
Mr. Rion Hall, J.P.	-	Member, Section 8(2) (c)(ii)
Mr. D. Trevor McNish	-	Member, Section 8(2) (c)(iii)

REPRESENTATIVES OF PARTIES:

The Company was represented by:

Mr. Leroy Equiano	-	Attorney-at-Law
Ms. Kaydian McGlashan	-	Legal Assistant

In attendance were:

Mr. Andrew Mais	-	Deputy Chief Executive Officer
Mr. Franklin Arboine	-	Shareholders Representative

The Aggrieved Worker was represented by:

Mr. Alexander Williams	-	Attorney at Law
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In attendance was:

Ms. Maureen Hassan	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties and oral submissions made during eight (8) sittings, from April 24, 2014 to February 23, 2015.

BACKGROUND TO THE DISPUTE:

Miss Maureen Hassan was employed to New Era Finance Limited on February 21, 2011, as the Human Resources and Administration Manager. On November 13, 2012, she was called to a meeting with the Deputy CEO, Mr. Andrew Mais and the Shareholders Representative, Mr. Franklin Arboine, to discuss a prepared "Report" which included issues concerning the performance of Miss Hassan.

During the course of the meeting, Miss Hassan is said to have made some unsavoury remarks which the Management classified as “gross insubordination” and consequently, summarily terminated her services.

Consequently, the matter was referred to the Ministry of Labour & Social Security (MLSS) and having failed to arrive at any agreement, the Minister by letter dated November 26, 2013, sent the dispute to the Industrial Disputes Tribunal (IDT) to be determined and settled.

THE COMPANY’S CASE:

New Era Finance Limited t/a OBF Finance Company, hereinafter called “the Company” is an Industrial and Provident Society, carrying out activities as a lending institution through a number of branches island-wide. Miss Hassan was provided with an employment contract by way of letter dated January 31, 2011, which outlined the terms and conditions of her engagement.

The Company in its submission called two (2) witnesses in support of its case. It contends that from inception, there were growing concerns with regards to Miss Hassan’s general demeanour, poor performance and the manner in which critical matters were being handled by her, which was a major source of distress and embarrassment to the Company. An example of this was indicated by reference to an incident surrounding the suspension of Stacy Smith, a Branch Supervisor, by Miss Hassan, which the Company had to reverse to stave off threatened action by the employee. Miss Hassan was given a verbal caution to desist from such behaviour.

A comprehensive review and analysis of the Human Resources (HR) of the Company was commissioned in October 2012, by the Shareholders Representative, Mr. Franklyn Arboine. The undertaking was carried out by a newly recruited member of staff and was presented to Mr. Andrew Mais, Deputy CEO on November 6, 2012. The report focused on a comprehensive staff analysis of the varying concerns affecting the HR, such as staff turnover, performance and down-turn in profits and made recommendations where appropriate. The findings of the report were very critical of Miss Hassan and also criticised other levels up to the CEO. The Company in its Brief submitted that all senior persons, including Miss Hassan, were given copies of the report and subsequently, a meeting was called with Miss Hassan, on November 13, 2012, to discuss the findings. Present at that meeting were Mr. Andrew Mais, Mr. Franklin Arboine, and Miss Hassan. Mr. Arboine was outlining his concerns to Miss Hassan, when in an enraged outburst, she interjected in a disrespectful, insulting and impertinent manner, by bellowing that “*he was talking a load of shit; with due respect.*”

The Company in its submission told the Tribunal that they felt that the remarks were inappropriate, showed utter disregard and contempt for the owners and leadership of the organisation and would threaten any continued confidence in Miss Hassan's ability to lead the HR department, consistent with the values of the Company. Consequently, she was asked to leave the room and after a brief moment of consultation between Mr. Mais and Mr. Arboine, she was called back and asked if she was prepared to retract her statement. She, however, responded that "*they could do what they wanted to do.*" After a further discussion and taking into consideration that the outburst was most inappropriate, such utterances and certainly at the level and manner in which they were used, was taken to be and viewed as an act of "*Gross Insubordination,*" warranting instant dismissal. It was therefore agreed that in all the circumstances, Miss Hassan's employment should be terminated with immediate effect.

Miss Hassan was then told that she was dismissed and upon inquiry she was told that she would be paid for two (2) weeks in lieu of notice. She was to leave the room and remove her personal effects and leave the premises immediately. She then left the room and premises.

The Company further submitted that there is a Code of Conduct for all employees of the Company. However, the Code was not followed in this case based on the offence of Gross Misconduct. The nature of the insubordination would not allow for anything less than instant dismissal. Consequently, there was no breach of the procedural guidelines as certain circumstances do not call for a strict adherence of the procedure in terminating an employee. Mr. Mais considered the meeting to have been civil on the part of the officers as there was no shouting or accusation and as such, he felt the decision and action taken were fair.

Mr. Mais in evidence told the Tribunal that it was he who had convened the meeting in his office, as Miss Hassan reported to him. Mr. Arboine was with him prior to the meeting and participated upon his invitation. The HR management is a part of the daily operations and the commissioned report was mainly about the Human Resources Department. Mr. Mais informed the Tribunal that he did not discuss the report with Miss Hassan, prior to the meeting; neither did he give her a copy. However, he said that she received a copy from Miss Sasso. He further advised that it was he who requested the report regarding the performance of the HR Department and the task was undertaken by Miss Jacqueline Sasso, who was employed as a HR Trainee Manager and reported to both Miss Hassan and himself. Mr. Arboine is not a worker but a representative of the owners.

He, Andrew Mais, had the right to employ and dismiss workers and not Mr. Arboine. It was he who had sent a copy of the report to Mr. Arboine and asked him to participate in the meeting with Miss Hassan. Mr. Arboine testified that he has been attached to New Era, since 1999, as the Shareholders Representative to uphold the company's integrity and image. He is not involved in the day to day operations and oversight is done by the CEO/Deputy CEO, assisted by Managers. He is not aware how managers are employed nor does he dismiss them. He does not give advice on who is to be employed or dismissed but he has the prerogative to say no if he is not in agreement. His visits to the Office vary from time to time. Consequently, he knew of the employment of Miss Hassan through his general oversight.

Mr. Arboine in giving evidence, admitted that it was he who commissioned the report to be done by Miss Sasso, based on concerns he had. Resulting from the report, Miss Hassan was called to a meeting to go over the report. She did not react well to the results. The report did not recommend the dismissal of Miss Hassan but indicated areas in which improvements were necessary. In his opinion, if the report was followed, it would have led to the correction of the ills.

The Company further contended that:

- there was no breach of the procedural guidelines and certain circumstances do not allow for a strict adherence of the procedure in terminating an employee
- it was at the conclusion of a meeting on the 13th November 2012, where the issue of the performance of the Miss Hassan was discussed, that she was told that her employment would be terminated
- the behaviour of Miss Hassan at this meeting was disgraceful and amounted to gross insubordination and total disrespect to the organization
- Miss Hassan's utterance in an enraged tone and in response to concerns expressed by the shareholder's representative was ***"you are talking a load of shit, with respect sir"***
- the behaviour of disrespect and gross insubordination were so heinous and the facts so manifestly clear, that a reasonable employer could take the view that whatever explanation the employee advanced, it would make no difference
- Miss Hassan's complaint is out of vexation and malice and an abuse of the system. She knew exactly what she did and the effects of it, since she has had to discipline staff for insubordination in the past. As the HR Manager, she must have been aware of the effect certain utterances would have on the organization as well as the consequences.

- she chose not to recant her utterance and apologize when given the chance. Instead, she said “*you are free to do what you want to do*” Consequently the Company had no choice other than to terminate her services
- the employee was paid two weeks’ pay in lieu of notice in keeping with the terms of her contract.

In closing, the Company’s Attorney, Mr. Leroy Equiano, pointed out that the Company was not a public entity and was not governed by the same rules of engagement. It was a private company, established to be productive and to make profits. No one can tell the Company who they can or must invite to a meeting.

The Company’s main contention in this case, was whether the words used by Miss Hassan were indeed said and if they were, would that amount to gross misconduct, warranting dismissal. The outburst was a most disrespectful action to one of the most senior officers of the Company. If she used the words, what would be the action of any reasonable employer? It is the Company’s case that their evidence of what took place is what is correct, as Miss Hassan did not challenge the evidence and was building her case as the hearing proceeded and as such, should not be believed.

The Company cited from several cases to support its position, chief of which were:

- 1) Sillifant v Powell Duffryn Timber Ltd. {1983} IRLR 91 the United Kingdom Employment Appeals Tribunal held as stated at page 2 of the judgement:

‘The Industrial Tribunal had not erred in law in finding that the appellant employee had been fairly dismissed on grounds of suspected dishonesty, notwithstanding that the employers had failed to carry out a proper investigation and had not given the employee a fair opportunity to give an explanation so that the third requirement in British Home Stores Ltd v Burchell [1978] IRLR 379 not was satisfied. Even if judged in the light of the circumstances known at the time of the dismissal, the employer’s decision was reasonable because of some failure to follow a fair procedure the dismissal can be held fair, if, on the facts proved before the Industrial Tribunal, the Industrial Tribunal comes to the conclusion that the employer could reasonably have decided to dismiss if he had followed a fair procedure.’

- 2) At paragraph 31 on page 14 The Employment Appeal Tribunal stated:

‘In our judgement, apart from the authority to which we are about to refer, the correct approach to such a case would be as follows. The only test of the fairness of a dismissal is the

reasonableness of the employer's decision to dismiss judged at the time at which the dismissal takes effect. An Industrial Tribunal is not bound to hold that any procedural failure by the employer renders the dismissal unfair: it is one of the factors to be weighed by the Industrial Tribunal in deciding whether or not the dismissal was reasonable. The weight to be attached to such procedural failure should depend upon the circumstances known to the employer at the time of the dismissal not on the actual consequence of such failure.'

And

- 3) In *Polkey v A E Dayton Service Ltd* {1987} IRLR 503 the UK House of Lords held, at page 2 that:

'In considering whether the employer acted reasonably or unreasonably in treating the reason for dismissal as a sufficient reason for dismissing the employee, there is no scope for the Tribunal to consider whether, if the employer had acted differently, he might have dismissed the employee. It is what the employer did that is to be judged, not what he might have done.'

In judging whether what the employer did was reasonable, it is right to consider what a reasonable employer would have had in mind at the time he decided to dismiss as the consequence of not consulting or not warning as provided for in the Code of Practice. If the employer could reasonably have concluded in the light of the circumstances known to him at the time of dismissal that consultation or warning would be utterly useless, he might well act reasonably even if he did not observe the provisions of the Code. Failure to observe the requirement of the Code relating to consultation or warning will not necessarily render a dismissal unfair.'

The Company submitted that in taking all the above into consideration, the employer had acted reasonably, as any reasonable employer would have done in similar circumstances. In the circumstances of this case, the Company asked that the Tribunal find the dismissal of Miss Hassan to be just and fair.

THE AGGRIEVED WORKER'S CASE:

The Attorney representing Miss Maureen Hassan called her as a witness in support of her case.

It is the aggrieved worker's evidence that she was provided with a contract of employment by letter dated January 31, 2011, to start working at New Era, on February 21, 2011, in the capacity of Human Resources and Administration Manager. Her contract provided among other things:

- 1) that the Company's policies and procedures manual would form part of her employment contract and
- 2) that after a six (6) month period of probation, she would be entitled to the statutory period of notice of the termination of her employment.

It is Miss Hassan's evidence, that on November 13, 2012, she was called by Mr. Andrew Mais and asked to visit his office. On entering, she saw Mr. Franklyn Arboine, the Shareholder's Representative, who greeted her. He then told her that he had sad news for her because "*we are going to let you go with one month's pay.*" She asked him why and he replied that it was a family owned company and they can do what they wanted to. When he saw the puzzled look on her face, he then asked if she believed the "grapevine" can be eliminated. She told him no, but it can be reduced. He then told her that she did not train "Doccu Centre Department Staff," to which she replied, "*you are talking rubbish*". Miss Hassan, under cross examination strongly, denied telling Mr. Arboine that he was "*talking a load a shit*," she responded that way because she was being accused of something which was not entirely under her purview.

Miss Hassan testified that she did not believe the word "rubbish" to be a very harsh word, particularly coming after she had already been dismissed or that it was sufficient for anyone to lose trust. When she was dismissed she was "shocked and traumatised" but not angry. She believed that as adults, after making the comments, the relationship could have been reconciled and did not feel that Mr. Arboine was shocked based on his response that as the shareholders representative, he was allowed to talk rubbish. Miss Hassan then asked if she was going to get a letter of termination to which Mr. Arboine replied that she could have it in blood. She also asked for a copy of her payslip but Mr. Arboine also refused this. She then went back to her office, where she found a security guard waiting outside the door. She entered and tried to print a payslip but the computer was already disconnected and she needed it to take to the National Housing Trust and could not locate the original. She tried to straighten the things on her desk under the watchful eyes of the guard, who she told there was no need for that. She then made a call to the Accountant, to say goodbye and left the premises with the guard following behind her.

Miss Hassan advised that several things were unfolding that day as three (3) other persons were also dismissed just before her. Other staff members and customers were around and knew what was happening. She felt uneasy, belittled, embarrassed and shocked.

It is Miss Hassan's evidence, that she never received a copy of Miss Sasso's report and only saw it in the Company's brief. In her capacity as HR Manager she was aware that Miss Sasso was employed as a Secretary at the Constant Spring Branch. Miss Sasso had resigned in February 2012, but rejoined in August 2012, at the Head Office and assigned to the HR Department as a Trainee Manager. She became aware of this via an e-mail which was sent from Mr. Mais, requesting that Mr. Arboine assist in her development. Miss Sasso reported to Mr. Arboine, who was not a Manager and should not be involved in the day to day operations of the company.

Miss Hassan testified, that based on her knowledge and in keeping with the Company's policy, Mr. Arboine should not be employing Miss Sasso or any other staff member. She was suspicious as to why Miss Sasso was employed and suspected that she was planted in the HR Department, based on the contents of the e-mail and Miss Sasso's position, to take over her job. Furthermore, she and Miss Sasso had spoken about it. She got on well with Miss Sasso and assisted her where necessary. However, when Miss Sasso requested staff files, she objected until she received a memo from Mr. Mais authorising their release. It is Miss Hassan's evidence, that she could not be happy in the way the change was being effected.

Miss Hassan contended that a copy of Miss Sasso's report was never given to her before the meeting. At the meeting, she was never angry and thought the meeting would be an amicable one and having read the report, she felt it was a mild one and spoke little about HR. No other report was tendered at the meeting and no questions were asked about any report.

Miss Hassan also testified that at the meeting on November 13, 2012, she was told that she would receive one month's pay in lieu of notice, but she only had two weeks pay credited to her account, which she became aware of when she subsequently received a payslip.

Miss Hassan told the Tribunal, that she knew Mr. Arboine before the meeting, as he came in almost every day. They had a cordial relationship and she was aware of his position as the Shareholders Representative. Her evidence is that she does not know the shareholders, as there was no Management Committee in place at the time.

It was not unusual to have meetings with Mr. Mais and Mr. Arboine to discuss the business of the Company. The actions and decisions taken by Mr. Arboine as Shareholders Representative were taken contrary to the rules and regulations of the Company as she expected decisions/instructions of the shareholders/directors would be passed down through the Deputy CEO and not done directly by Mr. Arboine.

It is Miss Hassan's evidence, that there was no previous mention/ discussion of her performance before she was dismissed and she believed she was doing a good job and was an asset to the Company. She was not aware of any lack/loss of confidence between herself and the Directors/Shareholders and she was not presented with any evidence of such. Miss Hassan has still not received a letter of dismissal.

In conclusion, Miss Hassan's counsel, Mr. Alexander Williams submitted, that while the evidence showed that there was only one HR Manager and that there was no intention to increase the complement of the department, then having Miss Sasso as a trainee HR Manager, was a clear indication that the Company intended to dismiss Miss Hassan. He questioned the justification of the Company in breaching its own code, by persons in pursuit of their own cause, outside of Miss Hassan's presence and taking a decision to dismiss a Senior Manager, without a hearing. He considered it high handedness and to have told the Tribunal that it was not necessary, and to effect immediate dismissal was unfair, wrongful and unjustifiable.

Furthermore, there was no evidence that the supposed outburst of Miss Hassan caused any effect on the Company and no disrespect to the Company or the staff. Consequently, he considered the dismissal as unjustified and is requesting re-instatement and compensation.

Mr. Williams also referred to several authorities to support his position, that even if the words attributed to have been said by his client were true, one such incident could not be considered as gross misconduct to warrant immediate dismissal. He posited that dismissal based on a single act of a minor infraction from an otherwise competent employee would evince unreasonable conduct on the part of the employer. He referred to two (2) cases:

- *Egerton Chang v National Housing Trust [1991] 28 JLR 494* and mentioned that in that case, though the employee acted foolishly and misguidedly, it was not sufficiently grave to warrant summary dismissal but a reprimand.

- *Equipment Maintenance v NWU* IDT Award 22/2002 handed down on February 14, 2003, where a ruling was made that the dismissal following the first instance of misconduct, is not consistent with the Labour Relations Code.

He submitted that bad behaviour or an intemperate remark, would not ipso facto, amount to gross misconduct, as necessarily impacting an important contractual obligation. The evidence supplied suggested that the circumstances in this case, warranted an investigation and a full hearing at the local level, by persons in the Company, not directly involved in the meeting where the alleged words were spoken.

Mr. Williams further submitted that it was obvious, that given the lack of previous notice to Miss Hassan, the fact that a report was being discussed, done by a planted junior employee, who was being groomed to replace Miss Hassan, it is understandable that the atmosphere in the meeting would not have been cordial and that outbursts were to be expected.

He concluded, that given the fact that there was no previous misconduct by Miss Hassan; a summary dismissal was grossly unreasonable and unfair. He further submitted that the dismissal was unjustifiable. Consequently, since she has not been properly terminated and given the nature of the alleged misconduct, which is one outburst that had no serious consequences, Miss Hassan ought to be reinstated without any loss of pay.

THE TRIBUNAL'S FINDINGS:

Throughout the proceedings, the Tribunal observed a number of inconsistencies, such as:

- Mr. Mais claimed that it was he who re-employed Miss Sasso and placed her in the HR Department to undertake the review of the Human Resources of the organization, while on the other hand Mr. Arboine admitted that it was he who commissioned the review of the HR Department based on concerns that he had.
- Under cross examination, Mr. Mais advised that while Miss Sasso was listed as the HR Trainee Manager at the time of engagement, she was not then being considered as replacement for Miss Hassan's position. Yet, Miss Hassan in her evidence, claimed knowledge of this from a memo and in discussions with Miss Sasso.

- Mr. Mais advised that it was he who convened the meeting with Miss Hassan and who ultimately advised her of her dismissal after her outburst. On the other hand, Miss Hassan advised that while she was invited to the meeting by Mr. Mais, it was Mr. Arboine who spoke for most of the time in the meeting and who advised her of her dismissal, refused her a copy of her payslip, denied her the letter of dismissal, and directed her to pick up her personal belongings, under the watchful eyes and escort of the security guard to leave the premises. This appears to be consistent with the fact that her alleged “gross misconduct/insubordination” statements are claimed to have been directed to/at Mr. Arboine.
- She also testified that it was Mr. Arboine who advised her to dismiss Stacy Smith but on referring to the Code of Conduct, she had changed it to suspension, to which Miss Smith had appealed.
- Mr. Arboine claimed that he did not give or see Miss Hassan receive a copy of Miss Sasso’s report but was reliably advised by a member of the Audit & Compliant Department and based on her behaviour he would not be surprised if she claimed not seeing the report. Mr. Mais, on the other hand, claimed, that the report was given to Miss Hassan by Miss Sasso.
- Miss Hassan at one time claimed she did not see the report before she went to the meeting of November 13, 2012 and at another time said she did not receive a copy until she got the Company’s brief at the IDT.
- Under cross examination, it is Mr. Arboine’s evidence that after the meeting with Miss Hassan, he left the issue with the Deputy CEO, on the basis that he would deal with it. He was present when Mr. Mais advised Miss Hassan that she would be dismissed. He was asked to notify the IT department to disable the computer assigned to Miss Hassan and for the Security Guard to be present when Miss Hassan collected her personal belongings and to see her leave the premises. She had asked for her dismissal in writing but he was not aware if she got the letter. He did not hear Miss Hassan accept pay in lieu of notice but he was told this subsequently by Mr. Mais. Miss Hassan however, stated that Mr. Arboine had been the one who advised her that “they had bad news for her, she was going to be let go with one months’ pay in lieu of notice” but she got only two weeks pay, deposited to her account.

It is very evident that while not being a Manager of New Era and not required to be involved in the daily operations of the organisation, Mr. Franklyn Arboine, as the Shareholders' Representative, does take an active role in his frequent visits to the Head Office. It is he who rehired/reassigned Miss Sasso and she reported to him. The Tribunal accepts the evidence of Miss Hassan that it was not strange for Mr. Arboine to be involved in meetings with her and Mr. Mais.

Mr. Mais and Mr. Arboine were the accusers, judge and jury in the matter and in keeping with the tenets of the Labour Relations Code and the rules of natural justice Miss Hassan's rights as an employee were breached. The rules of natural justice and the statutory requirement require that a person must be allowed an adequate opportunity to present his/her case where certain interests and rights may be adversely affected by a decision-maker.

In light of the above, the Tribunal must point out that under Section 3(4) of the Labour Relations and Industrial Disputes Act, it is obliged by statute to take this point into consideration, which states:

"A failure on the part of any person to observe any provision of a 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."

The Company's own *Policy and Procedural Manual*, which formed a vital part of Miss Hassan's employment contract, was also breached. The contract states that:

"The Company policy and procedures manual will form part of your employment contract and as such you will be bounded by it. You are expected to know the contents and utilize the manual in the execution of your daily functions."

Under Section (XV) sub-titled Disciplinary Action the Manual states:

"When disciplinary action is contemplated against an employee, he/she will be given every opportunity to state his/her case. All facts will be investigated thoroughly before a decision is made, based on the offence."

And

Under Section titled TERMINATION OF EMPLOYMENT

1.0 POLICY – Subject to the Act and Expanded to say:

“Employment with the Company can terminate in a number of ways. It may end at the instigation of the employee, the instigation of the Company because of the unsuitability or lack of capacity of the employee, because of redundancy, or because of misconduct on the part of the employee. The Company’s Policy is that its action and attitudes should be appropriate to the circumstances of each case.”

2.0 PROCEDURE

2.1 *“If the reason for termination is misconduct, the Disciplinary Procedure will be followed.*

(See exhibit # 1 under the disciplinary code section of the manual)

The Disciplinary Code section preamble states:

“It is obviously not practical to specify all offences, and this schedule has therefore been confined to those, which are common to most establishments. The schedule will be generally followed, and shall not prejudice the dictates and guidelines of relevant Acts, which shall take precedence at all times. The Company reserves the rights to treat any offence against Company Rules and Regulations, or any act of misconduct, on the merits of the case and on the basis of the particular circumstances and the employee shall be given the right of defence subject to summary assessment. As the schedule shows, disciplinary measures will be more severe if previous offences are recorded on the employee’s file.

And under TYPE OF OFFENCE # 5 which is applicable to this case the Code specifies:

<i>TYPE OF OFFENCE</i>	<i>1ST</i>	<i>2ND</i>	<i>3RD</i>	<i>4TH</i>
	<i>OFFENCE</i>	<i>OFFENCE</i>	<i>OFFENCE</i>	<i>OFFENCE</i>
<i>The use of obscene or</i>	<i>Verbal</i>	<i>Written</i>	<i>(5) days’</i>	<i>Dismissal.</i>
<i>Abusive language</i>	<i>Warning</i>	<i>Warning</i>	<i>Suspension</i>	
<i>Quarrelling, disrespect</i>				
<i>for human dignity.</i>				

It is apparent that no consideration was given to the above process. While Mr. Mais testified that Miss Hassan had previous incidents of indiscretions and insubordination, they were not classified as being gross and therefore no actions were taken.

There were no written Performance Reports, only verbal ones were reported as done and while it was claimed that there were performance concerns, there is no evidence that these were brought to her attention and addressed before her dismissal.

The Tribunal accepts the evidence of Miss Hassan as it relates to her request for her termination letter. It is her evidence that she was told by Mr. Arboine that she could get it "in blood" and to date, none has been provided, which was not refuted by the Company.

Miss Hassan claims that since her dismissal she has been seeking employment and has gone for several interviews and even when she believes she was successful, no positive response has been received. She had recently obtained a contract for a short period.

Based on the overall evidence submitted, we are of the view that the high involvement of the Shareholders Representative in the day to day operations of the Company, led to an unhealthy staff relationship. This was compounded by the placement of Miss Sasso in the HRD, of which Miss Hassan was the Manager; with the knowledge that she was being trained to take over from her. This was done without discussions with Miss Hassan, hence, the atmosphere must have been tense. Consequently, it is not difficult to see why relations would have been strained, leading to the unsubstantiated allegations by the aggrieved worker, the counter allegation of gross misconduct by the Company and the deliberate bypassing of its own Disciplinary Code. It is clear that some amount of ill-will existed between Miss Hassan and Mr. Arboine.

The role played by the Shareholders Representative in the dismissal process and the apparent complicity of the Deputy CEO, left much to be desired as how not to entreat with staff matters and thus leaves us with no alternative but to conclude that the dismissal was unfair, unreasonable and in the circumstance unjustified.

Taking all the foregoing into consideration and the fact that the aggrieved worker Miss Maureen Hassan has asked for reinstatement without any loss of income, we make the following award:

AWARD:

That Miss Hassan's dismissal is unjustified and in keeping with Section 12, (5)(c) iii of the LRIDA the Tribunal order that:

- A) She be reinstated by July 20, 2015, failing which;
- B) She be compensated with fifteen (15) month's salary at the current rate of the position held at the time of her dismissal.

DATED THIS th 7 DAY OF JULY, 2015.



Norman Wright, Q.C.
Chairman.

Rion B. Hall, J.P.
Member.

D. Trevor McNish
Member.

Witness:

Royette Creary
Secretary to the Division.