

**INDUSTRIAL DISPUTES TRIBUNAL**  
**Dispute No.: 39/2019**

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**SETTLEMENT OF DISPUTE**

**BETWEEN**

**P&C MACWELL COMPANY LIMITED**

**AND**

**MRS. CHARMAINE LEWIS**

**AND THE**

***AWARD***

**I.D.T. DIVISION**

**MISS. SADEERA SHAW - CHAIRMAN**

**MR. RODCLIFFE ROBERTSON - MEMBER**

**MR. KEITH FAGAN - MEMBER**

**JANUARY 21, 2021**

IDT 39/2019

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**P&C MACWELL COMPANY LIMITED  
(THE COMPANY)**

**AND**

**MRS. CHARMAINE LEWIS  
(THE DISMISSED WORKER)**

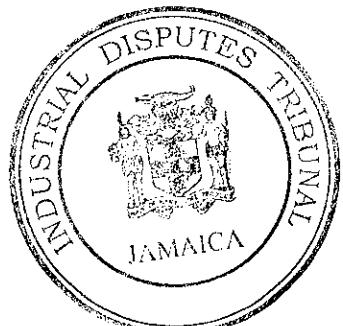
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**REFERENCE**

By letter dated October 23, 2019, 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 the matter contained herein for settlement by the Industrial Dispute Tribunal.

**The Terms of Reference were as follows:**

*“To determine and settle the dispute between P&C Macwell Company Limited on the one hand, and Charmaine Lewis on the other hand, over the termination of her employment.”*



## **DIVISION**

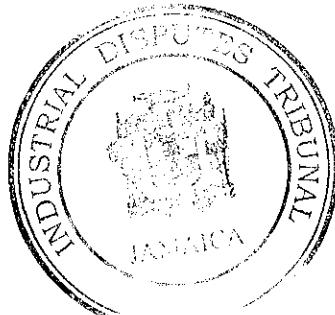
The Division of the Tribunal which was selected in accordance with Section 8 (2)(c) of the Act and which dealt with the matter comprised:

Miss Sadeera Shaw	-	Chairman
Mr. Rodcliffe Robertson	-	Member, Section 8(2) (c) (ii)
Mr. Keith Fagan	-	Member, Section 8(2) (c) (iii)

## **REPRESENTATIVES OF THE PARTIES**

The **Company** was represented by:

Mr. Lorenzo J. Eccleston	-	Attorney-at-Law
Mr. Carl Bailey	-	Owner
Mrs. Veronica Cain-Green	-	Supervisor
Mrs. Christine Green-Hart	-	Manager



The **Aggrieved** was represented by:

Mr. Rudolph Thomas	-	Industrial Relations Consultant
Mr. Kevin Loney	-	Industrial Relations Consultant

In attendance

Mrs. Charmaine Lewis	-	Dismissed Worker
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## **SUBMISSIONS AND SITTINGS**

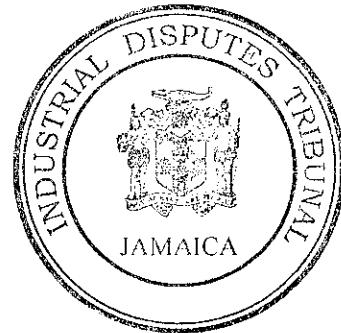
Briefs were submitted by both parties who made oral submissions during seven (7) sittings held between March 4, 2020 and September 22, 2020.

## **BACKGROUND TO THE DISPUTE**

1. P&C Macwell Company Limited, *hereinafter referred to as the Company*, is a supermarket and wholesale which formerly operated under the name Super Plus Foods and is located at 24 High Street, Black River in the parish of St. Elizabeth. Mrs. Charmaine Lewis, *hereinafter referred to as the Dismissed Worker*, was employed to the Company in or about 1999 as a cashier and later promoted to Supervisor under the former owner. In or about October 2011, there was a change in ownership to that of the present company where the employment of the Dismissed Worker and a few others continued.
2. By way of letter dated January 19, 2019, the employment of the Dismissed Worker was terminated. The letter is set out below:-

*"January 19, 2019*

*Mrs. Charmaine Lewis  
Barbary Hall P.A  
St. Elizabeth*



*Dear Mrs. Lewis,*

*This letter confirms your dismissal from P & C Macwell Company Limited for poor performance and disrespectful behavior, effective immediately.*

*You are dismissed because, despite repeated verbal warnings, a written warning and a suspension, your behavior has not improved. Your written warning and suspension has been documented, which you have read and signed. Additionally, repeated attempts to have mediation meetings with you and the manager and other staff members have not resulted in any improvements.*

*As a consequence, your dismissal is the result of your inability to take corrective action as well as your refusal to work and communicate respectfully with your manager and other staff members.*

*Payment in lieu of notice (8 Weeks) and for your accrued vacation days (3 weeks) and your final pay is provided along with this letter.*

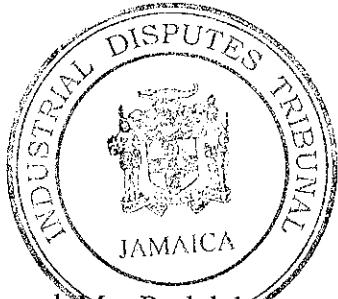
*You will need to immediately turn in the Health card that was issued to you by the company.*

*Regards,*

*Carl Bailey*

*Director*

*P & C Macwell Company limited"*



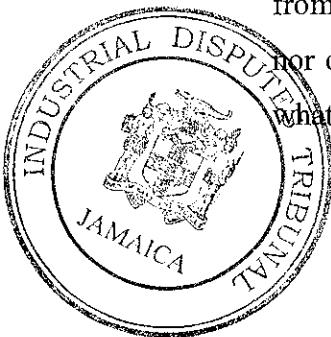
3. The Dismissed Worker engaged the services of Mr. Kevin Loney and Mr. Rudolph Thomas, Industrial Relations Consultants, who contested her termination and sought the intervention of the Ministry of Labour & Social Security. No resolution was reached and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

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

4. The Company called three (3) witnesses. The first witness was Mrs. Christine Green-Hart, the Manager, who has been working with the Company since August 1998 under the previous owner Super Plus Foods and her employment continued when there was a change of ownership to that of the present Company. In her examination-in-chief, she described her duties as ensuring that the store opens on time, workers report to work on time, customers are properly looked after, ensure that receival and check – off supervisors are at their posts at given times and to give orders to the supervisors, cashiers and normal floor workers.
5. When asked if she was familiar with the employment process at the Company, she responded in the affirmative explaining that when a worker was interviewed, she was the person who took their personal documents such as NIS, TRN and ID. She would explain the operations of the company, hand them the rule sheet which they would confirm that they have read and understood by signing on the document. She testified that she was

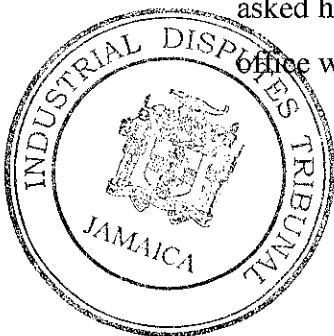
familiar with the Dismissed Worker by her behaviour and that she worked with her for 20 years. Further, she was involved in the employment of the Dismissed Worker in that she processed the paperwork which were required for her employment. In addition to processing Dismissed Worker's paperwork, she also issued her a copy of the Rule Sheet which the Dismissed Worker signed and she introduced her to the other employees.

6. The Dismissed Worker was employed in the capacity of a cashier and later promoted to Supervisor. The Dismissed Worker was paid fortnightly and her duties included receiving goods, checking off goods and selling phone cards. Up to a point, she was authorized to sign cheques for the cashiers and process refunds. She indicated that she worked well with the Dismissed Worker up to a point in 2017 where the Dismissed Worker became boisterous, failed to report to work on time and refused to take instructions from her. Mrs. Hart testified that disciplinary actions were taken against the Dismissed Worker in the form of verbal warnings, a written warning and a suspension.
7. In relation to refunds, Mrs. Hart explained the refund procedure and the role in which the Supervisor played in it. In those instances, the cashier would request assistance from a Supervisor authorized with a code to process refunds. If the correct procedure is not exercised, the incorrect amount would be refunded and the cashier would have a shortage at the end of the work day. The Dismissed Worker was authorized to process refunds up until January 2019 when that duty was taken from her due to the number of errors made.
8. Specifically, in early January 2019 the cashier who requested the Dismissed Worker's assistance in processing a refund realized that the incorrect amount would have been paid out and she refused to give the Dismissed Worker the cash to pay over to the customer. The Dismissed Worker, then, took the money from the phone card sales and gave it to the customer. As a result, Mrs. Hart went through the refund procedure with the Dismissed Worker and showed her the amount which should have been refunded had the correct procedure been followed. Mrs. Hart explained to the Dismissed Worker that taking funds from the phone card sales was not a true reflection of the day's sale, neither on groceries nor on phone cards. It also affected the inventory. The Dismissed Worker didn't accept what was said and it was at this point, Mr. Carl Bailey, the owner, informed her that she



was no longer authorized to process refunds. All the cashiers and supervisors were made aware that the Dismissed Worker was no longer authorized to process refunds.

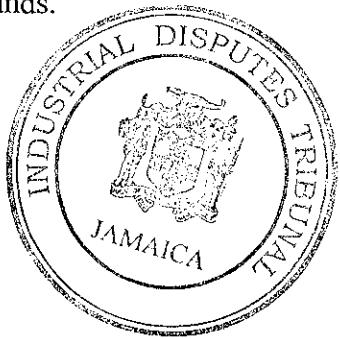
9. On January 18, 2019, there was another incident where a customer requested a change in the size of an item which required a refund of the difference in the cost of the item. The Dismissed Worker checked the system for the cost of both items and used her calculator to work out the difference. The Dismissed Worker gave the customer the item and the cash difference which she took from the phone card sales. Mrs. Hart testified that she intervened and asked why the Dismissed Worker processed a refund when she was no longer authorized to do so. The Dismissed Worker responded in a boisterous manner in the presence of customers and cashiers. The matter was reported to Mr. Bailey on his arrival later in the day.
10. Mr. Bailey had a meeting with the Dismissed Worker to discuss what had happened. That said evening, Mr. Bailey called the Dismissed Worker as well as the other Supervisors and Mrs. Hart to a meeting in his office. The Dismissed Worker was the last person to arrive for the said meeting. As Mr. Bailey was explaining the purpose of the meeting, the Dismissed Worker interrupted him and said "*if you don't talk to me a ready, a don't waan hear nothing from yuh.*" The Dismissed Worker, then, exited the office and slammed the door behind her.
11. The Dismissed Worker returned to work the following morning on January 19, 2019 where she carried out her usual duties. She also attempted to process another refund which Mrs. Hart observed and approached her on. In response, the Dismissed Worker "*started with her bad behavior again...she start shutting me up telling me that I'm allowing my position to get to my head*". Mrs. Hart informed Mr. Bailey about what transpired, and Mr. Bailey called the Dismissed Worker to a meeting.
12. At the end of the work day when the Supervisors were getting ready to leave, Mr. Bailey asked her to call the Dismissed Worker which she did. The Dismissed Worker went to the office where Mr. Bailey handed her a letter of termination.



13. The second witness was Mrs. Veronica Cain-Green who is a Supervisor at the Company for six (6) years. She testified that upon being employed she was given a rule sheet. She stated that she is familiar with the Dismissed Worker in the capacity of a Supervisor. She described the Dismissed Worker as a nice person when she started working at the Company, but things changed overtime where the Dismissed Worker became out of control.

14. She testified that she was familiar with the disciplinary process and how the Company handles disciplinary matters. Specifically, persons would be called to a meeting in which all present would have a discussion about the particular situation and a warning would be issued. In cross-examination, she stated that she attended the meetings but didn't participate. She recalled an incident which occurred on the 18<sup>th</sup> of January 2019 and a meeting called as a result. All Supervisors and the Manager attended the said meeting and the Dismissed Worker was the last person to arrive. In cross-examination, she specified the persons who were present in the meeting along with the Dismissed Worker, namely, Mr. Carl Bailey- Owner, Mrs. Christine Green-Hart- Manager, Ms. Shavanise Vassell- Supervisor and herself. As soon as Mr. Bailey began to speak, the Dismissed Worker *"started to behave bad and got up and went through the door and slam it"*. When asked if anyone made any attempt to contact the Dismissed Worker, she responded that it was Mrs. Hart's duty to contact her.

15. She explained that the meeting was as a result of a refund that the Dismissed Worker processed which she was no longer authorized to do. Also, the incident occurred on the same day as the meeting. She further stated that it wasn't the first time that the Dismissed Worker processed a refund after being prohibited from doing so. In cross-examination, she was not able to provide the date and time of the previous occasion but gave details as to what occurred which involved a biscuit being refunded and the customer was given more than the cost of the item. Due to that incident, Mr. Bailey prohibited her from processing refunds.



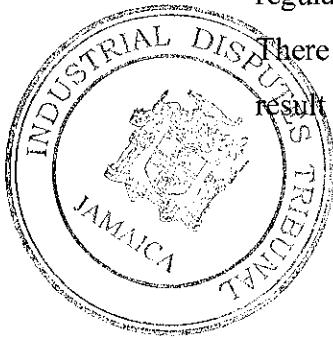
16. She was asked by the Panel if she knew the difference between a meeting and a hearing which she responded in the affirmative stating that the meeting on the 18<sup>th</sup> of January 2019 was not a hearing.

17. The third witness was Mr. Carl Bailey, the Owner of the Company. He testified that Mrs. Hart and himself are responsible for recruiting new employees. He described the Company structure to the effect that the Store Manager would report to him and the supervisors and line staff would report to the Store Manager. He became familiar with the Dismissed Worker when he assumed ownership of the Company in October 2011. She was employed in 1999 and was one of the few employees under the previous owner who transitioned to the present Company as a Supervisor.

18. As a supervisor, the Dismissed Worker's duties included opening the store when Mrs. Hart was absent, to check off cashiers, balance the cashiers at the end of the work day, check off the orders to ensure that what is ordered is collected, check the attendance of the line staff and up to a point she had the authority to process refunds. The behavioural traits he expected from a Supervisor are that they should be honest, dedicated, show leadership, be respectful and ensuring customer satisfaction.

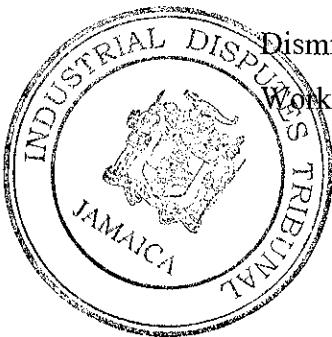
19. He described the working relationship between himself and the Dismissed Worker as a good relationship where they shared information and experiences until things took a "U-turn" in 2017. Since then, the Dismissed Worker's attendance started to fall off and the communication between the Dismissed Worker and the employees including Store Manager, Mrs. Hart and himself began to deteriorate to the point of it being considered disrespectful. There were numerous meetings over time in which the decision was taken in August 2018 to issue a written warning for her boisterous behaviour.

20. He further indicated that Supervisors were not required to sign in upon arrival to work as they would have been in the supermarket before it opened. The Dismissed Worker, on a regular basis, arrived at work after the opening of the store which he spoke to her about. There were several meetings to discuss her attendance which did not improve and as a result the supermarket keys were taken from her as the supermarket would open late when



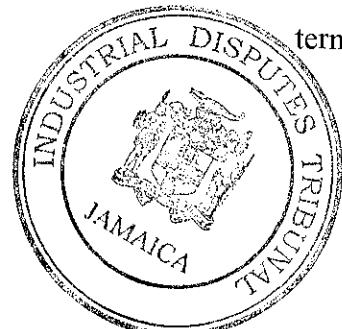
Mrs. Hart was absent. Such duty was then assigned to Mrs. Veronica Cain-Green. There were no warnings or disciplinary sanction on her file indicating this repeated occurrence other than the keys taken away from her and the duty reassigned. In addition, the Dismissed Worker stopped signing the required book evidencing that her pay slip was collected. He spoke to her about it but her behaviour did not change.

21. In relation to the refund policy, Mr. Bailey explained the policy and the procedure. He stated that Mrs. Hart, the Dismissed Worker and himself were the only authorized persons in the Company to process refunds. If the procedure was not followed in its entirety, it would be at the expense of the Company as the customer would receive more than the cost of the item. He described this issue as one which caused him to have meetings with the Dismissed Worker. The Dismissed Worker did not request a third party/representative to be present for the said meetings as they were not hearings. After having discussions on the continued errors in processing refunds, he informed the Dismissed Worker not to process any further refunds. All the Supervisors were informed of this decision in a meeting to ensure all were on the same page. After the decision and meeting, the Dismissed Worker continued to process refunds as her code was not yet deactivated.
22. The Dismissed Worker's code to process refunds was eventually deactivated. She continued to process refunds by looking up the price of the item and taking the funds from the cashier's drawer. This would be discovered at the end of the work day when the cashier would have a shortage and the reason given. He testified that Mrs. Hart would speak to the Dismissed Worker whenever she attempted to process a refund in her presence. The Dismissed Worker would respond in effect that Mrs. Hart should not speak to her about what she was doing.
23. Mr. Bailey gave evidence that the Dismissed Worker's behavior had a negative impact on the other workers especially the cashiers and bag packers as they were the closest to the confrontations whenever it occurred. A few customers noticed a difference as it had reached to the point where there was no communication between Mrs. Hart and the Dismissed Worker. Due to the breakdown in the relationship between the Dismissed Worker and the cashiers, the Dismissed Worker was stripped of her duty to check off the



cashiers at the end of the work day. This duty was assigned to another Supervisor, Ms. Shavanise Vassell. As a result of this decision, the communication between the Dismissed Worker and Ms. Vassell deteriorated.

24. In the week of her dismissal, the Dismissed Worker was involved in two (2) incidents concerning refunds of red stripe beer and biscuit. On the 18<sup>th</sup> of January 2019, the Dismissed Worker, without authorization, processed a refund. Mrs. Hart, who was in close proximity, saw the amount that the Dismissed Worker was about to give the customer and knew that it was more than the cost of item. At that point Mrs. Hart intercepted and attempted to process the refund correctly. This was met by an outburst from the Dismissed Worker in front of the customer and other employees. The customer called Mr. Bailey and informed him of the incident. Mrs. Hart called thereafter about the same incident and he informed her that he will have a meeting to deal with it in the afternoon of the work day.
25. Upon arriving at the supermarket, Mr. Bailey spoke to the Dismissed Worker briefly about the incident and told her that they will have another meeting in the presence of the Manager and other Supervisors. At the time of the meeting, Ms. Vassell was already in the office as she was checking off the cashiers. Mrs. Hart and Mrs. Green entered the room which Mrs. Hart did not see the Dismissed Worker. Mrs. Hart exited to find the Dismissed Worker and to let her know that Mr. Bailey was ready. The Dismissed Worker was the last person to enter the office and at which point Mr. Bailey started to speak. He testified that as soon as he said two (2) words, the Dismissed Worker informed him that she was not going to be a part of the meeting, stepped out and slammed the door. Mrs. Hart followed her and returned informing him that the Dismissed Worker had left. Mr. Bailey considered her behaviour too gross which left him with no choice but to dismiss her.
26. The following day the Dismissed Worker turned up for work at 9am and carried out her duties. Mr. Bailey arrived at work approximately 12 noon. He drafted the termination letter and prepared a cheque representing notice pay, outstanding vacation and her final pay. The Dismissed Worker was called to a meeting with Mr. Bailey where he handed her the termination letter and cheque. The Dismissed Worker collected the termination letter only.



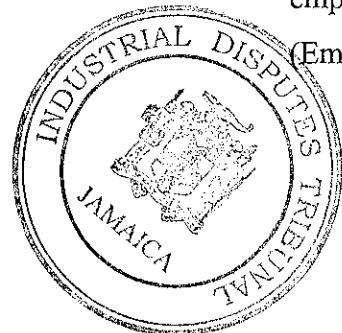
27. During cross-examination, Mr. Bailey stated that prior to purchasing the Company, he was a Sales Representative for Nestle Jamaica and the Company, called Super Plus Foods at the time, was one of his accounts. When he assumed ownership of the Company, six (6) employees transitioned from the previous workforce including Mrs. Hart (Store Manager) and the Dismissed Worker (Supervisor). The records for the six (6) employees were given to him as their employment continued. In the Dismissed Worker's file, Mr. Bailey contended that the Dismissed Worker signed a rule sheet as evidence of having read, understood and received it even though an unsigned copy was initially presented to the Tribunal. A signed copy was later tendered into evidence.

28. The Dismissed Worker was not given a written job description but she knew of her duties through verbal communication and meetings. Minutes of all the meetings held were not recorded as he didn't think they were necessary. When asked if he was familiar with due process, natural justice and the Labour Relations Code, he responded that he was. In 2018, a written warning and suspension were issued to the Dismissed Worker and at the time of the suspension, a hearing was not held as it was his understanding that there should only be a hearing before termination.

29. When asked why he didn't invite the Dismissed Worker to a hearing before terminating her service, he responded that the misconduct was so gross that it eliminated the need for a hearing. He further stated that gross misconduct is an exemption to having a hearing and he is the person who decides whether the misconduct is gross or not.

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

30. The Company contends that the Dismissed Worker committed numerous acts of misconduct which culminated with her act of gross misconduct on January 18, 2019 led to her dismissal on January 19, 2019. It further submits that the law allows for an employee to be dismissed without notice where there has been such conduct on the part of the employee amounting to gross misconduct and reliance placed on s. 3 (5) of The (Employment Termination and Redundancy Payments) Act 1974.



31. The Dismissed Worker's refusal to remain in the meeting with her employer on January 18, 2019 to discuss the misconduct which occurred earlier that day having walked out of the meeting, slammed the door and left the premises was the proverbial straw that broke the camel's back.

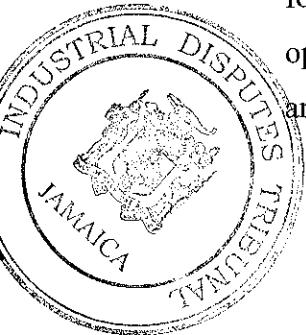
32. The Dismissed Worker's dismissal for gross misconduct was in accordance with the Labour Relations Code. Reliance was placed on section 22 (ii)(b) of the Labour Relations Code which provides that "*no worker should be dismissed for a first breach of discipline except in the case of gross misconduct.*"

33. The Company also contends that the determination of the case rests on credibility. It is submitted that the evidence of the Dismissed Worker is completely discredited by reason of untruths, blatant unexplained and unresolved contradictions. In the circumstances, the Company is of the view that the Dismissed Worker's conflicting and/or contradictory answers make her an unreliable and discredited witness with no reliance whatsoever to be placed on the evidence given by her. On the other hand, the Company submits that the Tribunal views the witnesses of the Company as witnesses of truth who were reliable, credible and corroborated each other's evidence.

34. It is submitted that a finding of justifiable dismissal on the grounds of gross misconduct is appropriate in the instant case and is in keeping with the Labour Relations Code and/or the Rules of Natural Justice. As such, no monetary compensation or reinstatement would apply. Alternatively, if the Tribunal were to be of the view that the dismissal was in breach of natural justice and/or the Labour Relations Code that no order be made for the Dismissed Worker to be reinstated and an award for one (1) month pay be made in her favour.

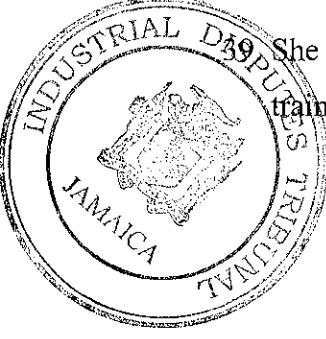
### **THE DISMISSED WORKER'S CASE**

35. The Dismissed Worker testified in examination-in-chief that she worked at the Company for twenty (20) years when it originally operated as Super Plus Food Store and now operating as Mac's Food P & C Macwell. She started working at the Company as a cashier and five (5) years later she was promoted to a Supervisor. In 2012, she was introduced to



Mr. Bailey and informed that he will be the new Director of the Company. She maintained the position of Supervisor when the transition of ownership occurred and received an increase in salary. She gave evidence that she was not the only employee who transitioned and named a few including Mrs. Hart, the Store Manager.

36. Her duties included opening and closing the business on all days except her day off, in charge of cash, checked off the cashiers and goods, assisted Western Union with cash and paid the cleaners weekly. She stated that Mrs. Hart was senior to her in the organization. She further stated that she didn't report to Mrs. Hart but they worked together. In cross-examination, she stated that she in fact reported to Mrs. Hart. She indicated that she had a good working relationship with all of her co-workers.
37. She testified that she knew Mr. Bailey prior to him owning the Company as he was a sales representative who used to come to the Supermarket. The working relationship with her boss, Mr. Bailey, was good at first. It changed in 2016 when he became hostile towards her. From that time until her termination she felt undermined, insulted, mocked, disrespected and not recognized by Mr. Bailey, Mrs. Hart and all of the Supervisors. She explained that she was diagnosed with Lupus and as a result she lost her hair. She was mocked by Mr. Bailey, Mrs. Hart and the other Supervisors. She was not made aware of staff meetings nor changes being made in the workplace such as change in work schedule of the cashiers which she would ask out of concern as she was no longer responsible for checking off the cashiers.
38. She gave evidence that she was not given a job description nor a rule sheet when she was employed. When shown the signed copy of the rule sheet, she denied it was her signature. Her duties changed after a year of Mr. Bailey being the owner when she was moved from the office to selling phone cards which is a duty usually performed by cashiers. At times, she was allowed to check off goods when the other supervisors were not available. She was not informed of the reason for the change in her duties.

 She was allowed to process refunds which required a code. She testified that she was trained by Mr. Bailey with regards to the procedure of processing a refund. When asked if

she had any issues with processing a refund, she responded “no”. She then related an incident which occurred the same week of her termination. She was asked by a cashier to refund some beer and upon attempting to process the refund, she was unable to do so. She reported it to Mr. Bailey who then informed her that she is no longer allowed to do refunds and that Mrs. Hart will be processing the refunds. She indicated that that was the first time she had an issue with refunds and that is how she was informed that she was no longer allowed to process refunds. She didn’t try to process refunds after that date.

40. She said she was never written up for issues with refunds, never been called to a meeting regarding boisterous behavior, failing to carry out instructions nor being disrespectful to managers in the presence of others. She further stated that she was called to a meeting in Mr. Bailey’s office about a report he received about her behaving boisterously towards Mrs. Hart. As a result, she was issued a written notice of suspension for 3 days.
41. On January 18, 2019, a customer returned some biscuits to be exchanged for a different flavor. It did not require a refund because there was no difference in the size nor the cost of the biscuit. While doing the exchange, Mrs. Hart came to the counter and accused her of doing a refund and reminded her that her code was blocked. The customer also requested the price of 6 Shirley biscuits which she asked the cashier to check the system. She is of the view that Mrs. Hart may have seen that and thought she was processing a refund. She indicated that there was no further discussion on the matter and she was not asked to discuss the incident nor to attend a meeting. She later stated that upon leaving the supermarket to go home at the end of the work day, she received a message from Mr. Bailey to come to his office. Upon arrival, she saw Mr. Bailey, Mrs. Hart and the other Supervisors in the office. Mr. Bailey proceeded to say that she has no right to do refunds and that she should not do it anymore. She responded to Mr. Bailey stating that he had already spoken to her about it the day before. Mr. Bailey ended the meeting and Mrs. Green, Mrs. Hart and the Dismissed Worker left the office.
42. The next day, January 19, 2019, as she was leaving the premises at the end of the work day Mrs. Hart shouted to her and asked her to come to her while standing at Mr. Bailey’s office door. She proceeded into the office and saw Mr. Bailey sitting at his desk. He told her that

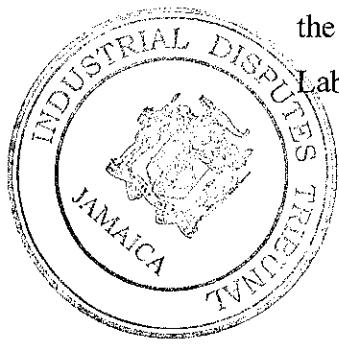


her termination letter and salary were on the desk. She was asked to read and sign the termination letter which she read but didn't sign as she was not in agreement with its contents. She did not collect the termination letter nor her salary.

43. In cross-examination, the Dismissed Worker stated that on January 19, 2019 she collected her salary prior to being called to Mr. Bailey's office. Further in cross-examination, she stated that she was shown the termination letter and salary on the desk. She read the termination letter and thanked them for having her for the time. She left the room and didn't collect the letter nor the funds.
44. After her termination, she made numerous attempts to seek another job which proved unsuccessful for the most part. She was able to get a holiday job at a Pharmacy for 2 weeks.

### **THE DISMISSED WORKER'S CONTENTIONS**

45. The Dismissed Worker contends that she was terminated without due process. She was denied the right to a disciplinary hearing which incorporated the principle that an accused should be allowed to have a representative of his/her own choice. As such, the principles of natural justice as well as the strict tenets of procedural fairness were not followed.
46. The Dismissed Worker was not informed of the charges laid against her so as to allow time to understand, seek representation of her own choice and prepare her case. She was required to attend a meeting within hours of an incident on January 18, 2019.
47. The process showed bias as the Owner of the Company, Mr. Bailey, was not an impartial person to preside over the meeting as a man should not be a judge in his own cause.
48. On January 19, 2019, the Dismissed Worker was terminated after she worked for the entire day. There was no evidence of any attempt to convene a properly constituted hearing after the meeting on January 18, 2019. She was entitled to the provisions at Section 22(1) of the Labour Relations Code.



49. It was asked of the Tribunal to reflect on the leading English case on impartiality *R v Sussex Justices, ex parte McCarthy* which is famous for bringing into common parlance the oft-quoted aphorism “*not only must justice be done; it must also be seen to be done.*” in considering any remedy.

50. The Dismissed Worker has been severely ‘damaged’ by the unjustifiable action taken against her as a result of her employers unfair and unjustifiable actions. The Dismissed Worker’s Representative asked the Tribunal to find that the Dismissed Worker was unjustifiably dismissed and that she wishes to be reinstated. If the Tribunal were not to order reinstatement, that it should award payment for the period between her dismissal and the award, an additional sum in consideration of the challenges she would face in securing alternate employment and all salary and emoluments she was entitled to at the time of her termination.

### **THE TRIBUNAL’S RESPONSE AND FINDINGS**

51. The Tribunal, after careful examination of the evidence adduced by both parties to the dispute, must determine whether the Company was justified in the termination of the Dismissed Worker’s employment.

52. The Tribunal accepts that the Dismissed Worker was employed to the Company for 20 years combining her years of service under the previous owner (Super Plus Foods Store) and current owner (P & C Macwell Company Limited) in which her employment continued with the transfer of ownership in 2011. It has further accepted that the Dismissed Worker held the position of Supervisor for 15 years up to the date of her termination. The Tribunal also accepts that there is no disciplinary schedule at the Company but rather a set of rules incorporated into a rule sheet by which all employees are required to abide by. It further accepts that the Dismissed Worker was aware of the said rules and the rule sheet.

53. With regards to the series of events concerning the Dismissed Worker and leading up to her termination, the Tribunal accepts the evidence put forward by the Company’s witnesses, Mrs. Green-Hart, Mrs. Cain-Green and Mr. Bailey. Specifically, the Tribunal



accepts that the Dismissed Worker was called to numerous meetings concerning her late attendance, boisterous behaviour and errors made in the performance of her duties.

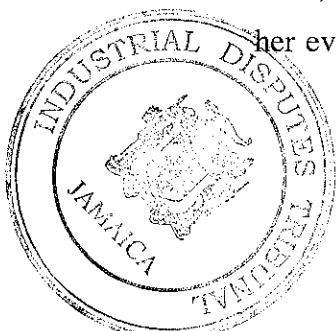
54. In relation to her late attendance, evidence was presented that the keys to open the supermarket, which were assigned to the Dismissed Worker, were taken from her and that duty was reassigned to Mrs. Cain-Green. Although minutes were not taken of the meetings regarding her late attendance, no evidence was put forward to the contrary that the duty to open the supermarket was reassigned to another supervisor due to the Dismissed Worker's late attendance.

55. Secondly, the Dismissed Worker denied ever being called to a meeting concerning her behaviour but later stated that Mr. Bailey called her to a meeting concerning a report about her being boisterous and the use of the company phone. As a result of said meeting, she was issued a suspension which she denied but later accepted that she received the notice of suspension under cross-examination.

56. Thirdly, the Tribunal accepts the evidence of the Company that after numerous meetings and discussions concerning errors made in processing refunds and told not to process refunds that the Dismissed Worker continued to process refunds.

57. In addition, the Tribunal accepts the evidence of the Company that the Dismissed Worker did not collect her final salary which was presented to her on the 19<sup>th</sup> of January 2019 along with the termination letter. Initially, the Dismissed Worker stated that she did not collect her final salary when presented with the termination letter on the 19<sup>th</sup> of January 2019. Under cross-examination, she stated that she collected her final salary before the end of the work day and before she was called to Mr. Bailey's office. It is important to note that her final salary and emoluments are included in her requested remedy and were stated in the letter of termination. If collected, it would not have been requested of the Tribunal to consider.

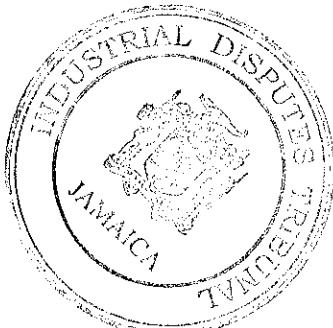
58. Thus, the Tribunal finds that the Dismissed Worker was not a credible witness. Throughout her evidence, she provided inconsistent statements with regards to who she reported to,



receipt of disciplinary sanctions, whether she was ever called to a meeting regarding her conduct and the collection of her final salary.

59. Following the incident on the 18<sup>th</sup> of January 2019, it is accepted that Mr. Bailey had a brief discussion with the Dismissed Worker about what transpired and informed her that they will have a meeting at the end of the work day. During the meeting, what was clear from all who gave evidence was that the Dismissed Worker stated that Mr. Bailey had already spoken to her about the issue which ended the meeting. The following day, the Dismissed Worker was called to Mr. Bailey's office where she was handed the termination letter and an envelope containing her salary and emoluments.
60. The Tribunal finds that the Dismissed Worker was not informed of the charges laid against her. Both Mr. Bailey and the Dismissed Worker confirmed that the Dismissed Worker was not invited to a disciplinary hearing prior to her termination on the 19<sup>th</sup> of January 2019. The Company, through its witnesses Mr. Bailey and Mrs. Green, stated that the meetings held with the Dismissed Worker were not considered hearings. The Dismissed Worker was not given the opportunity to defend herself and to choose a representative of her choice nor was she given adequate time to prepare her case as the incident and the meeting occurred on the same day. She was also not given the right to appeal the decision.
61. Notwithstanding the Tribunal's finding that the Dismissed Worker was not a credible witness, it also finds that the Company did not follow the procedure and rules of natural justice as stipulated in Section 22 of the Labour Relations Code.
62. The Tribunal must also consider Section 3(4) of the Labour Relations and Industrial Disputes Act, 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."*



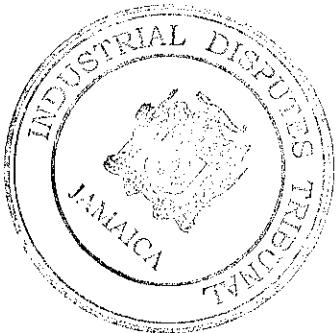
63. It is important to refer to Section 6(iii) of the Labour Relations Code where it states:

*"Some workers have special obligation arising out of the nature of their employment. Such worker when acting in the course of his employment should be mindful of those obligations and should refrain from action which conflicts with them."*

64. The duty of processing refunds is considered a special obligation in the Company which was not granted to all Supervisors. In fact, the Dismissed Worker was the only Supervisor with such authority. As such, that duty should not be exercised lightly as it can affect the profitability of the Company. Taking into consideration all of the evidence presented, the Tribunal finds that the Dismissed Worker contributed to her termination. It is also noted that the Dismissed Worker made concentrated efforts to mitigate her loss.

65. Although the Company might have had reasons to terminate the employment of the Dismissed Worker, the Tribunal finds that the procedure that the Company followed and the failure in observing the provisions of the Labour Relations Code which both culminated in the termination of the Dismissed Worker renders its decision to be unfair.

66. Thus, the Tribunal concludes that the Dismissed Worker was unjustifiably dismissed.



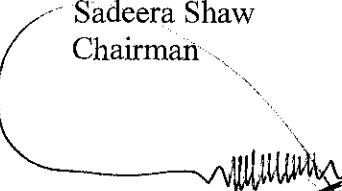
## AWARD

In accordance with Section 12 of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Mrs. Charmaine Lewis be compensated in the amount of Seven Hundred and Sixty-Seven Thousand Dollars (\$767,000.00) for her unjustifiable dismissal.

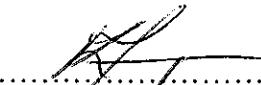
DATED THIS 21<sup>st</sup> DAY OF JANUARY 2021



Sadeera Shaw  
Chairman

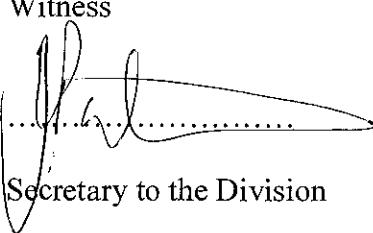


Rodcliffe Robertson  
Member



Keith Fagan  
Member

Witness



Secretary to the Division

