

INDUSTRIAL DISPUTES TRIBUNAL
Dispute No.: IDT 54/2017

SETTLEMENT OF DISPUTE

BETWEEN

PETROJAM LIMITED

AND

MR. HOWARD MOLLISON

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	CHAIRMAN
MR. LESLIE HALL, JP	-	MEMBER
MRS. CHELSIE SHELLIE VERNON-		MEMBER

SEPTEMBER 9 , 2020

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**PETROJAM LIMITED
(THE COMPANY)**

AND

**MR. HOWARD MOLLISON
(THE AGGRIEVED)**

REFERENCE:

By letter dated September 15, 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 of 1975 (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein: -

The Terms of Reference were:

"To determine and settle the dispute between Petrojam Limited on the one hand and Mr. Howard Mollison on the other hand over the termination of his Contract of Employment."



DIVISION:

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

Mr. Charles Jones, CD, JP	-	Chairman
Mr. Leslie Hall, JP	-	Member, Section 8(2) (c) (ii)
Mrs. Chelsie Shellie-Vernon	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Ms. Angela Robertson	-	Attorney-at-Law
Ms. Kimberly Morris	-	Attorney-at-Law
Mr. Christopher Cowan	-	Attorney-at-Law

In attendance was:

Mrs. Tamara Robinson	-	Company Secretary
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The **Aggrieved** was represented by:

Senator Lambert Brown, CD	-	Industrial Relations Consultant
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In attendance was:

Mr. Howard Mollison	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties and oral submissions made during fourteen (14) sittings held between June 3, 2019 and March 16, 2020.

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

Mr. Charles Jones, CD, JP	-	Chairman
Mr. Leslie Hall, JP	-	Member, Section 8(2) (c) (ii)
Mr. Clinton Lewis	-	Member, Section 8(2) (c) (iii)



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At the first sitting held on June 3, 2019, the Tribunal did not commence hearing the matter as the parties agreed to engage in talks at the local level to try to come to an agreement. These talks, however, were unsuccessful.

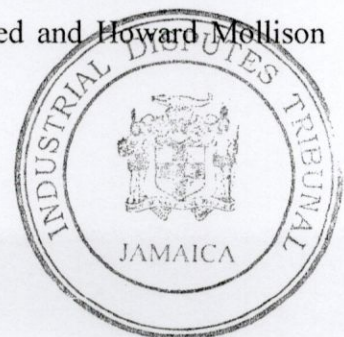
At the next sitting on July 23, 2019, Mr. Lewis was unavailable as he had been summoned for Juror Duty, and the Tribunal in order to have the hearing of the matter commence without further delay, Mrs. Chelsie Shellie-Vernon was appointed to the Division.

BACKGROUND TO THE DISPUTE:

1. Petrojam Limited (Petrojam), Jamaica's only petroleum refinery, is a limited liability company owned jointly by PDV Caribe S.A. (PDVSA) (a subsidiary of Petroleous de Venezuela Caribe) and the Petroleum Corporation of Jamaica (PCJ). The PCJ is a statutory body.
2. Mr. Howard Mollison was engaged on a two-year contract/gratuity basis to Petrojam Limited in the position of General Manager with effect from February 9, 2015. By letter dated Wednesday, July 20, 2016, his services were terminated with immediate effect.
3. Mr. Mollison wrote to the Permanent Secretary in the Ministry of Labour and Social Security (the Ministry) outlining a number of issues relating to his dismissal and engaged the services of Senator Lambert Brown, CD, Industrial Relations Consultant, to represent him in his quest to seek redress. Meetings were held with the parties at the Ministry, but these failed to resolve the matter of his dismissal. Consequently, the Honourable Minister of Labour and Social Security referred the dispute to the Industrial Disputes Tribunal for determination and settlement in accordance with Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act.

Petrojam made an Application for Leave to Apply for a Judicial Review and on October 23, 2017, the Supreme Court ruled that:

- 1) Leave for Judicial Review granted
- 2) Order by way of certiorari granted to quash the Minister's referral to the Industrial Disputes Tribunal the dispute between Petrojam Limited and Howard Mollison relating to the termination of his employment.



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Mr. Mollison challenged this Court order and the Court subsequently ruled in his favour in December 2018.

HEARING OF THE MATTER:

4. At the commencement of the hearing into this matter, Senator Lambert Brown formally requested the Company to provide him with the following documents:

- A copy of the Company's Compensation Policy of 2008 and any subsequent changes
- The Government of Jamaica's guidelines which determined the salary of the General Manager
- The Annual Report submitted by Petrojam to Cabinet for the year 2015
- The Minutes of the Board Meetings of Petrojam for the period July - October 2016
- A copy of the News Release issued by Petrojam on July 20, 2016, relative to Mr. Mollison's departure from Petrojam.
- The Joint Venture Agreement between Petroleum Corporation of Jamaica and PDVSA



5. He stated that he was making the request through the Tribunal at this time for the voluntary provision of the documents by the Company.
6. Miss Angela Robertson, Attorney-at-Law representing the Company in her response stated that she would have to take instructions from the Company as to whether or not the requested documents would be provided. However, she was of the view that there were certain documents over which the Tribunal had absolutely no jurisdiction.

THE COMPANY'S CASE:

7. Miss Robertson in her opening submission stated that Mr. Mollison was engaged by Petrojam Limited as the General Manager by way of a fixed term contract for two (2) years commencing on the 9th of February 2015 and which should have ended on the 8th of February 2017. She submitted that the only applicable provision of the contract as it relates to the dispute would

be section 15 (1) of the terms which stated that the appointment was subject to earlier termination.

8. Miss Robertson asked the Tribunal to pay attention to the termination provision which states:

"15.1 This agreement shall terminate upon one (1) month's notice or one (1) month's salary in lieu of notice

(a) by mutual consent

(b) to facilitate the return to the post of General Manager, Petrojam of the substantive post holder, currently on secondment to the PCJ, or

(c) upon any change in the ownership or control of the Company."

9. She pointed out that Clause 15.1(b) was the one which was applicable in this matter and that there was nothing in the wording of the clause that mandated that the substantive post holder should have completed his period of secondment at the PCJ. She stated that Mr. Mollison had accepted the job of General Manager on those terms and conditions.

10. In continuing her opening submission Miss Robertson stated "... so it really is, Mr. Chairman and Members, a matter of making a determination if the Company acted within its right as set out in the contract of employment. An event happened which triggered the ending of the contract; that event was known to the contract holder when he signed and accepted employment on the terms and conditions set out in the contract."

11. Miss Robertson further submitted that the decision to employ Mr. Mollison was based on the terms and conditions set out in his contract and consequently, with the return of the General Manager to his substantive post the Company exercised its right to terminate Mr. Mollison's employment in accordance with the provisions of Clause 15.1(b) of his contract. This was the underlying basis for the termination of his contract with the Company. The termination of Mr. Mollison's contract would not require or trigger the procedure under Section 22 of the Labour Relations Code as the Company maintained that there was no disciplinary issue with Mr. Mollison.

12. Miss Robertson invited the Tribunal's attention to a number of past cases relating to contract appointments and stated that Mr. Mollison's contract termination was to facilitate the return of the substantive post holder to the position of General Manager. She further stated "... It makes no qualification as to whether the return must be permanent, whether it is for a short period



of time, whether or not he can do several different things while returning to his post. It simply says, the right to bring the contract to an end with:

"one (1) month's notice or one (1) month's salary in lieu of notice to facilitate the return to the post of General Manager, Petrojam of the substantive post holder currently on secondment to the PCJ..."

13. She submitted that should the Tribunal make an award for compensation, '*... the only period that could be considered would be the period between August 2016 and February 8, 2017...*'

14. Miss Robertson called as the Company's first witness, Mr. Christopher Cargill, a businessman who in 2015 was Special Advisor to Minister Phillip Paulwell and who had been appointed chairman of the Board of the Petroleum Corporation of Jamaica and also as a board member of Petrojam Limited. Mr. Cargill testified as follows that:

- As Chairman of PCJ there were discussions regarding a restructuring exercise of the PCJ and its subsidiaries and the decision was taken to identify a person who could lead this charge. Consequently, Mr. Winston Watson, General Manager of Petrojam was identified
- Following discussions, it was agreed that Mr. Watson would be seconded to PCJ in the capacity of General Manager and that his mandate was to develop a plan for the restructuring of the Group, for presentation to the Board. This restructuring plan he said was needed by the parent Ministry prior to seeking the approval of Cabinet.
- In light of the uncertainty of the approval of the proposed restructuring it was decided to protect Mr. Watson's interest in his substantive post by seconding him to the PCJ.
- Petrojam engaged in a process to identify a candidate for a contract appointment as General Manager, and Mr. Howard Mollison was selected.
- Mr. Mollison was appointed on contract/gratuity terms. Clause 15.1(b) was included to protect Mr. Watson's return to his substantive post if the proposed restructuring was not approved by the government.

15. During cross examination by Senator Lambert Brown, Mr. Cargill testified that:

- He was not at Petrojam at the time of the termination of Mr. Mollison's contract of employment





- At that time there was a Joint Venture Agreement between Petrojam and PDVSA, a Venezuelan company, and there was an independent board
- In relation to Mr. Erwin Jones' letter to Mr. Winston Watson, he stated that "... *this was all part of the exchange of letters to enact the secondment. Yes.*" He further stated that he was only then aware that there was a six-month notice period stipulated for Mr. Watson's return to Petrojam.
- The terms of Mr. Mollison's contract were agreed between Chairman Erwin Jones (now deceased) and Mr. Mollison

16. Mr. Cargill was shown, and he identified a letter addressed to the Chairman of Petrojam, Mr. Erwin Jones dated November 2015, which he had co-signed with Mr. Williams Martinez, representing PDV Caribe. Mr. Cargill was asked, and he confirmed that the second paragraph of the letter quoted below was taken 'word for word' from the Joint Venture document:

"...the shareholders, PDV Caribe and Petroleum Corporation of Jamaica ...agreed in the Joint Venture dated the 14th of August 2006 that certain matters including but not limited to the following are reserve shareholders matters, in respect of which no action or decision should be taken without their prior approval evidence in writing..."

17. During further cross examination Mr. Cargill testified that the Petrojam Joint Venture comprised four (4) board members each representing Venezuela and Jamaica. He also stated that the Joint Venture Agreement contained a requirement that a properly constituted Board meeting must have a quorum consisting of Venezuelans and Jamaicans. He agreed that under the terms of the Joint Venture Agreement, resolutions could be legitimately approved by round robin, but that this would have required the participation of a representative number of both Venezuelans and Jamaicans.

18. During re-examination by Miss Robertson, Mr. Cargill was asked about the genesis of the letter which he had co-signed with Mr. Martinez. He stated that "...*Chairman Erwin Jones was making decisions at the Refinery without consultation with neither the Jamaican board members, and definitely not the Venezuelan Board members and as Chairman of the PCJ I thought it was necessary to write this letter....*"

19. Mr. Cargill was then asked what he understood by the provision in the contract letter which read:

"...The PCJ will provide no less than six (6) months prior notice in writing to Petrojam of the intent to terminate this secondment..."

He responded saying that there was no need for interpretation, as *"... it is quite clear here in black and white..."*

20. Miss Robertson then called Mr. Winston Watson, General Manager of Petrojam Limited, (on secondment to the PCJ) as the Company's next witness.

21. Mr. Watson testified as follows:



- In September 2014 he was asked by the then Chairman of PCJ to take on the role of Group General Manager on a secondment basis for two (2) years to undertake a transformation and reorganization of the PCJ Group of Companies.
- He was issued a letter signed by the Chairman of PCJ, Mr. Erwin Jones (now deceased).
- *"It says, I will serve as Group General Manager for two (2) years commencing September 1, 2014 and ending August 31, 2016 unless my period of secondment is terminated earlier by either the PCJ or Petrojam in accordance with the terms set out in the letter."*
- If he was required to return to Petrojam, six (6) months' notice would be given.
- He was aware that Mr. Howard Mollison was appointed General Manager at Petrojam.
- The secondment ended on August 31, 2016 and he resumed his substantive post as General Manager of Petrojam.
- In response to the question *"... and in your substantive role as the General Manager of Petrojam, did you do anything in relation to PCJ"*, Mr. Watson replied: *"...yes, during that period, they had not yet appointed a Group General Manager so there were times when I would go to PCJ and perform certain duties..."*
- He was paid a gratuity for the period while he was straddling both positions. He would leave Petrojam at *"2:00 to 3: 00 o'clock some afternoons and go to Petrojam and stay until 7:00 to 8:00 o'clock"*.



- He was again seconded to PCJ in November 2016 for a period of three (3) years
- On July 26, 2016 he went to Mr. Mollison's office and told him that he had been advised by the Board that he (Mr. Mollison) was being terminated with immediate effect
- Payments due to Mr. Mollison were made pursuant to the terms of his contract
- Mr. Williams Martinez, a Venezuelan was the liaison for PDVSA and in 2016 was the Chairman of Petrojam. It was assumed that documents signed by him would be valid.
- The signatures on the letter dated July 20, 2016 terminating the contract appointment of Mr. Mollison were those of Mr. Williams Martinez and Dr Bahado Singh

22. During cross examination Mr. Watson responded as follows:

- The letter terminating Mr. Mollison's contract appointment was signed by Mr. Martinez, Chairman, Petrojam and Dr Bahado Singh, Board Director of Petrojam
- Mr. Mollison did not report to him as Group Managing Director. He reported to the Board of Petrojam
- He was invited to a meeting at PCJ on July 20, 2016, following which he returned to Petrojam and went to the General Manager's office and advised Mr. Mollison that he needed to hand over the company's property.
- On July 20, 2016 he was asked to return to Petrojam and while at Petrojam he continued to oversee some of the operations of PCJ. This arrangement continued up to November 23, 2016 when he was again seconded to the Corporation.
- Mr. Mollison was not allowed to drive home the company vehicle.
- A Notice was issued to the staff, the first paragraph of which read:
- *"This serves to advise of the termination of Mr. Howard Mollison's contract as General Manager of Petrojam Limited effective Wednesday, July 20, 2016. This is to facilitate the return of Mr. Winston Watson to his substantive post as General Manager of Petrojam following the end of his secondment to the Petroleum Corporation of Jamaica (PCJ). Mr. Mollison was hired on a contractual basis for two years or until the end of Mr. Watson's secondment."*

- The Company had issued a release to the public advising that Mr. Mollison had resigned. This was later clarified in a letter dated August 19, 2016 to Mr. Mollison from Mr. Williams Martinez. He was not aware whether the clarification was made public.
- In response to the question as to whether the clause contained in his letter of secondment pertaining to the requirement that six (6) months' notice should be given if he were to return to Petrojam before the end of the secondment was activated, he stated "*I know the clause was not activated.*"
- He further stated that he resumed duties at Petrojam on July 20, 2016 although his secondment was due to end on August 31, 2016, and when asked if he had waived the six months' notice requirement, he stated, "*No, I personally did not waive it*".
- When asked if it was correct that having gone back to Petrojam he had only spent eight weeks of the seven months remaining on Mr. Mollison's contract, he responded "*I was back and forth*"
- His official secondment ended on August 31, 2016, but he could be returned to Petrojam at any time.
- The Board appointed Mr. Floyd Grindley as General Manager of Petrojam on a three-(3) year fixed term contract with effect from November 23, 2016, which was the same date that he again left on secondment to the PCJ
- He was not aware of the recruitment process used to fill the vacancy of General Manager of Petrojam

23. In complying with a request Mr. Watson read a Notice circulated to the management and staff which. stated that he (Mr. Watson) would again be seconded to PCJ as Group General Manager for three years. In keeping with his reassignment, Mr. Floyd A. Grindley would be appointed General Manager of Petrojam with effect from November 23, 2016 on a fixed term contract for three years.

24. During re-examination he stated that his official secondment came to an end on August 31, 2016 and that he was back at Petrojam from September 1, 2016 until November 23, 2016.



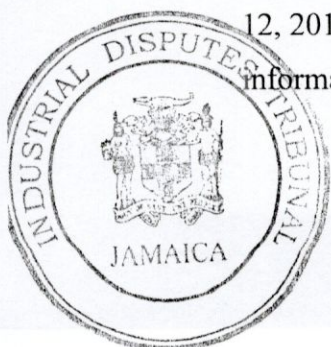
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25. In response to a question from a member of the Tribunal as to whether there was a written communication regarding his statement that he was straddling both positions, he said that there was nothing in writing.
26. He was further asked if the termination of Mr. Mollison's contract was by mutual agreement and he stated, *"I cannot answer, I was not there when he was actually terminated, I was more inclined to believe that it is to facilitate me."*
27. During cross examination, Senator Brown had sought to have admitted into evidence the Joint Venture Agreement between the Petroleum Corporation of Jamaica and Petroleous de Venezuela (PDVSA) to which Miss Robertson had objected on the ground that it was a confidential document. The Tribunal had agreed to give consideration to the request and to make a ruling at the next sitting.
28. On resumption the Chairman advised the parties that the Tribunal had considered the request and offered no objection to the document being produced in evidence unless it was proven that it was classified as a restricted document. Senator Brown responded that it was only Section 8 of the document that was relevant to this case. Miss Robertson requested time to consult with her principals in light of the confidentiality of the document. This was agreed by the Tribunal.
29. At the commencement of the subsequent sitting, with respect to Senator Brown's request to have Section 8 of the Joint Venture Agreement admitted into evidence, Miss Robertson advised the Tribunal that she had consulted and obtained the following advice from the Solicitor General.

"Based on the wording, we advise that the disclosures of Clauses 8 and 13 - those are the only two clauses of the Joint Venture Agreement [that are] permissible under the Joint Venture Agreement - as the request from the IDT may be considered as a requirement by a competent authority under Clause 15.3"

CASE FOR THE AGGRIEVED:

30. Senator Lambert Brown in his opening submission stated inter alia that Mr. Mollison had raised issues of discrepancies in his contract of employment with the Board at a meeting held on July 12, 2016. On July 14, 2016, Mr. Mollison was called into a meeting and requested to provide information regarding the discrepancies with his salary and compensation. This information



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was provided to the Board and subsequently he was summarily dismissed on July 20, 2016. The Company then issued a statement to the media stating that Mr. Mollison had resigned from the position of General Manager of Petrojam.

31. Senator Brown stated that Petrojam had breached Clause 2 of the Employment (Termination and Redundancy Payment) Act (ETRPA) relative to the right of notice at the time of termination. He made reference to the Hansard Notes of Parliament dated May 15, 1974 and to the discussion involving the late Most Honourable Hugh Shearer and the agreement that Section (3), Subsection 1(a) of the ETRPA should provide as follows:

“(3) The provisions of subsections (1) and (2) shall not be taken –

(a) to prevent either party to a contract of employment from waiving his right to notice at the time of termination,”

32. Senator Brown continued that the ETRPA would indicate that Clause 15(1)(b) in Mr. Mollison’s contract which provided for the Company to pay salary in lieu of notice was void, as *“the worker has a right to notice and that notice must be given in writing or in the presence of a credible witness”*.

33. In continuing Senator Brown stated that Mr. Mollison’s service was not terminated in accordance with the terms of his contract nor was it in accordance with the Joint Venture Agreement between PCJ and PDVSA. He said that the Company called no witness who could speak to what had transpired on July 20, 2016. The burden was on Petrojam to prove that the dismissal was justified, and they had failed to do so.

34. He ended his opening statement by stating that Mr. Mollison was not seeking reinstatement, but compensation for the loss of opportunities that were *“foreseeable and contemplated”*.

35. Senator Brown then called Mr. Mollison to testify on his own behalf. Mr. Mollison testified as follows:

- He had written a letter to the Chairman of Petrojam Limited, Mr. Williams Martinez advising that the views expressed in a letter addressed to him by Mr. Winston Watson were *“... inconsistent with both the facts and the spirit that informed the administration of [my] contract”*. The letter also stated that the Company had proceeded to issue a news release indicating that he had resigned.



- He had heard the release on the broadcast media and had read it in the newspaper. The public was never told that his departure from Petrojam was to facilitate Mr. Watson's return.
- When the matter was first referred to the Tribunal, action was taken by Petrojam in consultation with the Attorney General's Chambers to determine whether the Tribunal was empowered to hear the dispute. The Court ruled in Petrojam's favour and this was challenged by him. Subsequently, the Court overturned its earlier decision and issued a new ruling to the effect that the IDT was in fact authorized to conduct the hearing of the matter.
- The year 2015/16 while he was General Manager, was the only period that the oil loss performance was consistent with international best practice.
- During his tenure there were no complaints about his performance or his conduct. Additionally, the Company had stated that he had given outstanding service.
- On the day of his dismissal on July 20, 2016, he was not given notice and the issue of notice was never discussed with him.
- During his time at Petrojam, there was no adverse audit conducted by the Auditor General, nor was any adverse investigations undertaken by the Major Organized Crime and Anti-Corruption Agencies, the National Integrity Commission or PDVSA.
- He was in receipt of salary which was less than that stated in Petrojam's 2015/16 Annual Report and for that reason he raised the matter of his compensation with the Board at a meeting held on or around July 12, 2016. Other matters in relation to his contract were also raised.
- Mr. Mollison, in response to the question - "*... and there are requirements under the Joint Venture for board meetings to be held?*" replied "*Yes Sir*".

36. At this point, Senator Brown applied for Clause 8 of the Joint Venture Agreement between Petrojam and PDVSA to be admitted as an exhibit. The Tribunal agreed and it was admitted as Exhibit 19.

37. Mr. Mollison further testified that:



21

- He was called to a meeting on July 20, 2016 by Mr. Williams Martinez, Chairman of Petrojam and was told that it was to discuss the issue of compensation which he had raised at the Board meeting of July 12, 2016.
- The meeting with Mr. Martinez was held in the offices of the PCJ and Messrs Russell Hadeed and Richard Creary, Directors were present. Mr. Bahado Singh joined by telephone. Mr. Watson entered the meeting after the commencement.
- At the meeting, the Chairman indicated that the matters raised by him (Mr. Mollison) had been discussed. The Chairman referred him to a section of his contract and then handed him a letter of dismissal.
- He enquired if he would receive a letter that would outline the terms of separation and notice pay and was advised that given the sensitive nature of the process those matters would be dealt with in short order.
- Mr. Mollison confirmed that consequent on receiving the letter terminating his services, his enquiry in the meeting was whether there would be a further letter regarding notice, and other separation issues.
- Since his termination in July 2016 he had not been able to obtain full time employment.
- There was a one-week delay before his appointment was finalised in February 2015, while the Company awaited the approval of PDVSA, as his appointment required all shareholders' approval.

38. Mr. Mollison was then cross examined by Miss Robertson. He stated as follows:

- He had attended interviews in relation to his appointment at Petrojam.
- He recognised the initials on each page of the Contract as those of himself and Mr. Erwin Jones, the then Chairman of the Board.
- The contract date was February 2, 2016 but it was signed on March 18, 2015 by himself and Mr. Jones.
- Mr. Mollison agreed that the terms of the contract as put to him were as written, and agreed that Clause 15 – Termination, stipulated three (3) alternative methods by which his contract could be terminated:

i) by mutual agreement;



25

- ii) to facilitate the return to the post of General Manager, Petrojam, of the substantive post holder, currently on secondment to the PCJ; and
 - iii) upon any change in the ownership or control of the Company.
- He agreed that the Chairmanship of the Board of Petrojam alternated between a Director nominated by PCJ and a Director nominated by PDVSA, and that Mr. Williams Martinez was a representative of PDVSA.
 - He also agreed that the first Chairman should be a Director nominated by PDV Caribe and that the quorum for the transaction of business at any meeting of the Board should include at least two directors nominated by PCJ and at least two directors nominated PDV Caribe.
 - The letter of dismissal dated July 20, 2016 terminating his service was signed by Mr. Williams Martinez in his capacity as Chairman of Petrojam Limited and by Dr Percival Bahado-Singh, a Director of Petrojam Limited.
 - Certain payments under the terms and conditions of employment would have been dependent on the outcome of union negotiations between the Company and the Union.
 - The Company ought to have been aware of what would have been due to him at the time of termination as the negotiations had been completed. He however accepted a correction by Miss Robertson that they were not.
 - He had received payment in lieu of notice up to August 31, 2016.
 - Mr. Erwin Jones, the former Chairman had told him that Mr. Winston Watson would not have been returning to Petrojam.
 - He agreed that Clause 1 in the document regarding Mr. Winston Watson's secondment to PCJ had stated that the secondment would have been for two years commencing on September 1, 2014 and ending on August 31, 2016. The document also stipulated that "... you are expected to return to Petrojam at the end of the period of secondment"

39. Mr. Martinez was an authorized representative of PDV Caribe and authorized to "sign on some matters".



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40. Mr. Mollison in re-examination stated that the Company had indicated to him that his contract would have been renewed.
41. In response to a question posed by a Member of the Tribunal as to whether on the day that he had received the letter terminating his service he had responded, Mr. Mollison, answered yes. He had done so, because a dismissal with immediate effect would have caused him reputational damage. He had also advised that there were meetings scheduled in the on-going operations and that his immediate departure would have left a vacuum.

CLOSING SUBMISSIONS ON BEHALF OF THE AGGRIEVED:

42. Senator Brown in his closing submission stated inter alia:

- On July 12, 2016 Mr. Mollison had attended a Board meeting in his capacity as General Manager. At the meeting he raised issues regarding his compensation. These were issues he had raised with the previous Board, but which had remained unresolved.
- In February 2015 Mr. Mollison entered into a two-year contract with Petrojam and that Clause 16 of the contract included the possibility of an extension.
- On July 20, 2016 Mr. Mollison was summoned to a meeting to discuss the issues raised at the Board meeting; but instead of a discussion he was summarily dismissed. The letter stated:

".. We write to inform you that your employment as General Manager of Petrojam Limited is terminated with immediate effect on this day, Wednesday 20th July 2016.

.... This is pursuant to Clause 15.1(b) of your contract...."

- He pointed out that in the letter of dismissal, Petrojam had thanked Mr. Mollison for his "outstanding service" to the Company.
- In Petrojam's Brief it was stated that Mr. Mollison was not fired for cause or for any deficit in performance. Additionally, Petrojam had called no witnesses to explain what had led to the decision to terminate Mr. Mollison's service.



26

- He said that the “... *inference ought to be made that it was Mr. Mollison’s query about his compensation that led to his dismissal.....The nexus between his request and the meeting leading to his termination is undeniable.*”
- Petrojam had given Mr. Mollison no notice of dismissal despite the fact that both the law and his contract of employment required that notice should be given. There was no evidence of misconduct by Mr. Mollison and the burden was on Petrojam to bring such evidence to justify a fair dismissal.
- The authorities presented by the Company dealt with the issue of wrongful dismissal and reliance on those cases was fundamentally flawed and should be rejected by the Tribunal.
- Mr. Mollison’s evidence of the manner of dismissal was not contradicted by Mr. Winston Watson, a witness for Petrojam, nor was it otherwise challenged
- Mr. Mollison was contractually due one month’s notice in keeping with the Employment (Termination and Redundancy Payment) Act and that such notice should have been given in writing, unless it was given in the presence of a credible witness. Petrojam had provided no evidence that a written notice was given or that Mr. Mollison had waived his right to notice. Petrojam had failed to comply with the Act and “... *has therefore failed both on the facts and law to justify before the Tribunal that the dismissal of Mr. Howard Mollison was fair.*”
- Petrojam in 2014 had agreed to the secondment of Mr. Winston Watson, General Manager to the Petroleum Corporation of Jamaica for two years with effect from January 1, 2014. It was written in the contract that should Mr. Watson return to Petrojam earlier than August 31, 2016, six months’ notice in writing should have been given.
- Mr. Mollison was appointed General Manager on contract gratuity terms for a period of two years from February 2015 to February 2017, which ending date would have been six months after the expiry of Mr. Watson’s secondment. This was Petrojam’s doing and they should have been aware of the overlap. It could be deduced therefore that “...*Petrojam would honour and therefore give notice to Mr. Mollison if they intended to terminate Mr. Watson’s secondment earlier; ...*”



18

- The ending of Mr. Watson's secondment did not give Mr. Mollison the required notice nor was he asked to waive his (Mr. Watson's) right to notice as per the secondment agreement.
- Mr. Watson testified that he had only become aware that he was returning to Petrojam on July 20, 2016, the same day Mr. Mollison was terminated.
- Failure to give Mr. Mollison notice was unfair and unjustified despite the clause in his contract of employment which stated that his service could be terminated to facilitate the return of Mr. Watson to his substantive post.
- Petrojam failed to act in accordance with the Joint Venture Agreement between PCJ and PDVSA which governed the operations of Petrojam Limited
- There was no evidence before the Tribunal that the shareholders, PCJ and PDVSA had signed off on the termination of Mr. Mollison's contract consistent with the relevant clause of the Joint Venture Agreement
- There was no evidence that subsequent to the Board meeting held on July 12, 2016 that there was any other meeting of the Board where the decision to terminate the services of the General Manager would have been made. No Minutes of any Board meeting approving the termination of Mr. Mollison's appointment had been presented to the Tribunal, and Petrojam had provided no evidence of compliance with the requirements of the Joint Venture Agreement.
- Mrs. Tamara Robinson, Petrojam's Company Secretary, although attending all the Tribunal's sittings, was not called as a witness; nor were the persons who signed the letter of termination, or any other Directors called to testify in relation to what had led to the immediate termination of Mr. Mollison's contract.
- Mr. Watson made it clear that his secondment should have ended on August 31, 2016, but yet in the Company's Brief it was stated that "*...the secondment of the General Manager ended earlier than its anticipated timeline and that triggered the necessity of clause 15.1(b)*"
- He [Senator Brown] opined that "*Given this evidence of Mr. Watson, can it be justly stated that Mr. Mollison's termination on the 20th of July was to facilitate the return of Mr. Watson to his substantive post of General Manager?*"



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- Mr. Watson was seconded to PCJ as Group General Manager in September of 2014, was never relieved of that position and remained up to November 23, 2016 when a new period of secondment commenced which coincided with the appointment of Mr. Floyd Grindley as the General Manager of Petrojam.
- The Tribunal should find that the termination of Mr. Mollison's contract was unjustified.
- Mr. Mollison was not seeking reinstatement but wished to be treated in accordance with the provisions of Section 12(5)(c) (ii) of the Labour Relations and Industrial Disputes Act

- | | | |
|--------------------------|---|---|
| 1. Wages | - | Wages to the end of the contract period (salary at the time of termination was \$13,776,250 per annum |
| 2. Duty allowance | - | Duty allowance up to the end of the contract period |
| 3. Vacation leave | - | Vacation leave that would have been earned during the period July 20, 2016 to February 8, 2017 |
| 4. Gratuity | - | Gratuity that would have been earned for the period of engagement |
| 5. Incentive | - | In keeping with the terms of his employment |
| 6. Health benefit | - | Eligibility for the period July 2016 - February 2017 |
| 7. Savings plan | - | Payment due in keeping with the savings plan |
| 8. Extension of contract | - | Compensation based on the fact that the contract could have been extended |

43. Senator Brown in closing asked that the Tribunal also take into consideration the time value of money as the dismissal was four years ago. He submitted that Mr. Mollison be compensated in the amount of Sixty-Eight Million Two Hundred and Twenty- Four Thousand and Fifteen Dollars and Fifty-Four Cents (\$68,224,015.54) for his unjustified dismissal.



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CLOSING SUBMISSIONS ON BEHALF OF THE COMPANY:

44. In closing Miss. Robertson submitted that at the time that Mr. Watson was first seconded to the PCJ it was on the clear understanding that he would retain his substantive job as General Manager of Petrojam.

45. She further submitted inter alia:

- Mr. Erwin Jones who was at that time Chairman of Petrojam would have been fully cognizant of the terms of Mr. Watson's secondment. Consequently, Clause 15 of Mr. Mollison's contract would have addressed the reasons for termination, one of which was to facilitate Mr. Watson's return to his substantive post.
- The terms were clearly set out and Mr. Mollison would have read and accepted them when he signed the contract of employment on March 18, 2015
- Mr. Mollison knew that there were three (3) distinct ways that the contract appointment could have come to an end prematurely before the effluxion of time and he had accepted those terms.
- Mr. Mollison's contract was terminated in keeping with Clause 15(1)(b) of the contractual terms.

46. Miss Robertson requested that the Tribunal consider as part of the Company's submission paragraphs 40-76 of the Brief which related to the fact that the applicability of Section 22 of the Labour Relations Code was not before the Tribunal in this matter.

47. The relationship between Mr. Mollison and Petrojam was one of mutual respect. In its termination letter, the Company stated clearly the reason for the termination and subsequently paid him one (1) month's pay in lieu of notice in addition to other entitlements which were due to him as a result of the termination.

48. Miss Robertson also submitted as follows:

"Mr. Mollison could not have been unjustifiably dismissed as the reason for the termination of the contract was based on an express contractual term which the Company had the right to invoke. In the circumstances as there was no basis or claim that would result in disciplinary action there would be no requirement to observe the disciplinary procedures outlined in Section 22 of the Code.



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Further, the Company acted within the terms of the Contract, the Employment (Termination Redundancy Payments) Act (ETRPA) and the LRIDA.

In fact, the Company did not breach any Sections of the Code including but not limited to Sections 1, 2, 3, 5, 9, 10, 19 and 20.

The Company did not summarily dismiss Mr. Mollison but rendered payment to him in lieu of notice in accordance with the express provisions of the Contract which was in excess of his legal entitlement."

49. Miss Robertson also drew the Tribunal's attention to other past rulings in matters of termination of employees appointed on contract terms.

50. She also referred to Senator Brown's submission regarding the possibility of an extension of Mr. Mollison's contract. She pointed out that the wording of the contract explicitly stated that "...if the Company wishes it may extend the contract...", so there was no guarantee.

51. Continuing, Miss Robertson submitted that the letter of termination was "... pursuant to Clause 15(1)(b) of your Contract outlined below:

'15.1 This agreement shall terminate upon one month's notice or one month's salary in lieu of notice

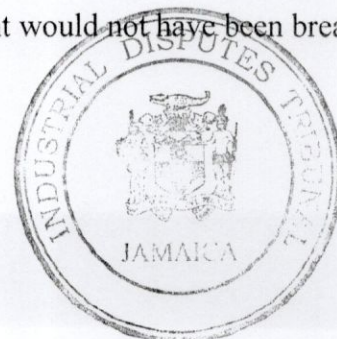
(b) to facilitate the return to the post of General Manager, Petrojam of the substantive post holder, currently on secondment to the PCJ So there would be no basis or reason to give Mr. Mollison notice."

52. She also stated that the Company rejected totally and completely the inference that it was Mr. Mollison's query regarding his compensation that had led to his dismissal.

53. She also rejected statements made by Senator Brown in his closing arguments that Petrojam had given Mr. Mollison no notice. She stated that "... in this case, the employer elected to give a payment in lieu of notice" She went on to state that the Company had "... no legal obligation to give a month's notice."

54. There would have been no burden on Petrojam in this case to bring any evidence to demonstrate the reason for the termination of the contract of employment as it was stated specifically in the terms of Mr. Mollison's contract.

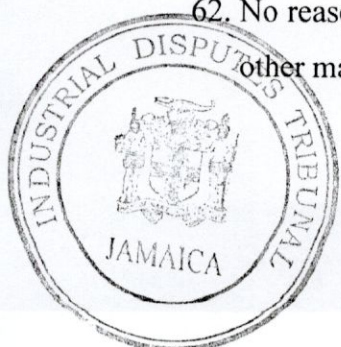
55. Miss Robertson submitted that the Joint Venture Agreement would not have been breached.



56. With regard to the claim for compensation outlined by Senator Brown, Miss Robertson stated that there would be no basis for the payment of the unexpired portion of the contract, which would include seven months' duty allowance, vacation leave earned for seven months, gratuity and incentive payments, health benefits and savings plan as well as payments for two (2) years beyond the date of the contract.
57. Miss Robertson concluded her argument stating "...We would therefore ask, Sir that the Tribunal make no award for any of the amounts claimed, and that the Tribunal make an award, that the decision to terminate Mr. Mollison's contract of employment in accordance with the terms of his fixed term contract was in fact justifiable".

TRIBUNAL'S DELIBERATIONS:

58. The Tribunal in its determination of this matter examined the Terms of Reference which stated:
- "To determine and settle the dispute between Petrojam Limited on the one hand and Mr. Howard Mollison on the other hand over the termination of his Contract of Employment."*
59. The Tribunal carefully examined the written and oral evidence presented, and in its deliberations noted the manner in which Mollison's employment was terminated by the Company and the reason given, which was to facilitate the immediate return of Mr. Winston Watson from secondment to the PCJ to his substantive post of General Manager, Petrojam.
60. The evidence of Messrs Peter Cargill and Winston Watson was that the reason which gave rise to Mr. Watson's first period of secondment to the PCJ was to oversee the restructuring of the PCJ Group of Companies, and if he had to be returned before the period ended, he would be given six months' notice. The Members noted that no evidence was presented by the Company to show that this restructuring exercise had been completed or whether it was aborted. In fact, when Mr. Watson returned to Petrojam, he continued to perform functions at the PCJ, and in his own words "straddled" the duties of both positions.
61. The Tribunal then asked itself the question as to what were the circumstances that necessitated the sudden recall of Mr. Winston Watson to Petrojam Limited.
62. No reason was given of any emergency or breakdown in the management of Petrojam or any other matter that would have necessitated Mr. Watson's immediate recall. This action seemed



to be at variance with one of the conditions of Mr. Watson's secondment to the PCJ which stated:

"... if for any other reason it becomes necessary for the PCJ to terminate the secondment before the expiration of the term of two (2) years, the PCJ will provide no less than six (6) months' prior notice in writing to Petrojam of the intent to terminate the secondment"

63. There was no evidence presented to show that the required six-month notice period for Mr. Watson to return to Petrojam was given. Mr. Watson in his response to a question from a Member of the Tribunal said he had not received the six-month notice.

64. The Tribunal noted that while Mr. Watson's secondment to PCJ was due to end on August 31, 2016, he was recalled to Petrojam Limited on July 20, 2016 but continued to perform duties in relation to the operations of the PCJ, for which he was compensated. Mr. Watson in giving evidence testified that the period of his secondment did not end until August 31, 2016 which would suggest that on July 20, 2016 there was no actual recall to the Company. Mr. Watson stated that he had "straddled both posts".

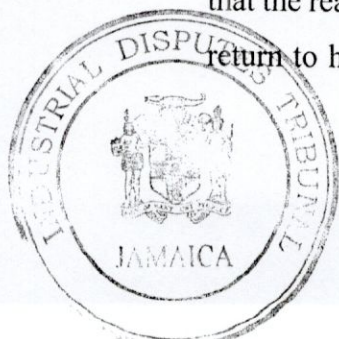
65. The Tribunal also took note of the fact that Mr. Watson was again seconded to the PCJ on a three-(3) year assignment with effect from November 23, 2016, which date coincided with the appointment of Mr. Floyd Grindley as the new General Manager of Petrojam Limited.

66. In its continuing deliberations the Tribunal sought to understand the specific reason for the immediate termination of Mr. Mollison's appointment given the contents of the last paragraph of the letter of termination, which stated:

"The Board of Management of Petrojam Limited would like to extend our thanks to you for your outstanding service to the Company and wish you the very best in your future endeavours."

The News Release issued by the Company further stated that Mr. Mollison had "resigned" from the position at Petrojam, which is contrary to what was indicated in his letter of termination.

67. Based on the evidence presented and the acknowledgement that Mr. Mollison had given "outstanding service to the Company" the Tribunal did not accept the position of the Company that the reason for Mr. Mollison's termination was solely to facilitate Mr. Watson's immediate return to his position of General Manager, Petrojam. The evidence showed that Mr. Watson



had not at the time completed the secondment, which had necessitated Mr. Mollison's employment. Neither had the six-(6) month notice clause in Mr. Watson's first secondment agreement to the PCJ been fulfilled.

THE TRIBUNAL'S FINDINGS:

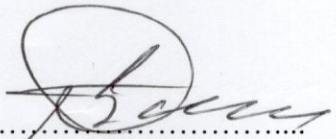
68. The Tribunal concluded that Clause 15(1(b)) of Mr. Mollison's Contract of Employment which stated "... *to facilitate the return to the post of General Manager, Petrojam, of the substantive post holder, currently on secondment to the PCJ*" was merely used by the Company to seek to justify the decision taken to abruptly terminate Mr. Mollison's employment, as there was no oral or written evidence presented that would have necessitated Mr. Watson's immediate recall, which was in breach of the provision for a six-month notice period prior to any recall.
69. Members were of the view that the manner in which Mr. Mollison's dismissal was effected was more in keeping with the procedure for summary dismissal for cause, and not applicable in the case of someone who it was reported had provided outstanding service.
70. The Company's action in this regard was compounded by the news release issued which had stated that Mr. Mollison had "resigned" from the position at Petrojam.
71. The Tribunal finds the termination of Mr. Howard Mollison's contract of employment to Petrojam Limited to be unjustifiable.



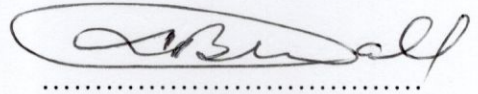
AWARD:

72. In accordance with Section 12(5)(c)(ii) of the Labour Relations and Industrial Disputes Act 1975, the Tribunal orders that Mr. Mollison be paid compensation for his unjustified dismissal in the amount of Fifteen Million Eight Hundred Thousand Dollars (\$15,800,000). The terminal payment made to him at the time of his dismissal should not be deducted from this payment.

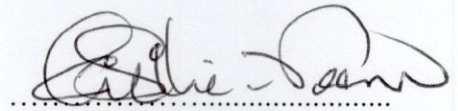
DATED THIS 9th DAY OF SEPTEMBER 2020



Mr. Charles Jones, CD JP
Chairman

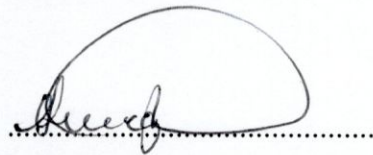


Mr. Leslie Hall, JP
Member



Mrs. Chelsie Shellie-Vernon
Member

Witness:



Mrs. Sandra Foote-Wright
Acting Secretary to the Division

