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INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 18/2014

SETTLEMENT OF DISPUTE

BETWEEN

PRIVATE SECTOR ORGANIZATION OF JAMAICA

AND

MISS VIOLET VASSELL

AND THE

AWARD

I.D.T. DIVISION

MR. DONOVAN HUNTER	-	CHAIRMAN
MR. TREVOR GRAHAM	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

DECEMBER 21, 2015

IDT 18/2014

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**PRIVATE SECTOR ORGANIZATION OF JAMAICA
(THE COMPANY)**

AND

**MISS VIOLET VASSELL
(THE AGGRIEVED)**

REFERENCE:

By letter dated April 4, 2014 the Honourable Minister of Labour and Social Security pursuant to Section 11 (1) 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 as follows:

"To determine and settle the dispute between the Private Sector Organization of Jamaica on the one hand and Ms. Violet Vassell on the other hand over the termination of her employment."

DIVISION:

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

Mr. Donovan Hunter	-	Chairman
Mr. Trevor Graham	-	Member, Section 8(2) (c) (ii)
Mr. Clinton Lewis	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF PARTIES:

The **Company** was represented by:

Ms. Angela Robertson	-	Attorney-at-Law
Mr. Dennis Chung	-	Chief Executive Officer (CEO)
Ms. Paulette Josephs	-	Human Resources Officer

The **Aggrieved worker** was represented by:

Ms. Nicole Burgher	-	Attorney-at-Law
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In attendance was:

Miss Violet Vassell	-	Aggrieved worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties and oral submissions made during twenty-five (25) sittings, from August 21, 2014 to October 16, 2015.

BACKGROUND TO THE DISPUTE:

The Private Sector Organization of Jamaica (PSOJ) was established in 1976 as an organization of private sector associations, companies and individuals working together to promote a competitive and productive private sector with offices at 39 Hope Road, Kingston 10 in the parish of St. Andrew.

The PSOJ's Human Resources Policy & Procedures Manual (the manual) sets out the policies governing employment practices and policies as well as the benefits provided to employees and the conduct expected from them. The manual lists several core values, among these are **partnership and teamwork**, service excellence, integrity, innovation and entrepreneurship. These are listed on page XI, case in point:

“Partnership and Teamwork

The organization aims to drive commitment and make a difference by nurturing team members, developing them so that they reach their full potential. We are committed to demonstrating respect for ourselves and our colleagues and our organization and impact the way we treat each other.”

Miss Violet Vassell was employed to the PSOJ in August 2006 and subsequently promoted to Marketing Manager. From the **inception** of Miss Vassell's employment she showed promise in her technical knowledge and skills but there was concern about her communication skills as well as her interpersonal relations from the organization's perspective. The interpersonal relations between Miss Vassell and her co-workers was not satisfactory and it continued to deteriorate causing tension in the work environment. By letter dated November 20, 2013, Miss Violet Vassell's service was terminated. Excerpt from her termination letter reads:-

'As employer we have done everything necessary to investigate this matter properly sensibly and practically. It has always been our objective to try and improve the existing working relationship. This without success or any co-operation from you. It is abundantly clear that notwithstanding all that we have tried to do the working relationship between yourself and your colleagues has not only broken down but is irremediable. In all the circumstances all efforts made by us has been sensible practical and genuine efforts to see whether any improvement can be effected. We have failed in this regard and your attitude has demonstrated that you have no intention of acting or doing anything to improve the same. In an effort to not exacerbate an already untenable situation which is adversely affecting the operations of the organization, we have no alternative but to terminate your contract of employment effective today...'

Miss Violet Vassell objected to her termination as she sees no justification for her dismissal after all, she was a good employee as the record will show.

CASE FOR THE PSOJ

Miss Violet Vassell was employed to the PSOJ on August 28, 2006 as a Communications Officer. As part of her terms and conditions of employment she was required to serve a ninety (90) day probationary period which could be extended for an additional three (3) months to allow for an assessment of her performance and suitability. By letter dated December 19, 2006, Mrs. Tanya Pringle, the then Director, Cooperate and Public Affairs extended Miss Vassell's probationary period to February 27, 2007. The probation was extended because Mrs. Pringle was not yet comfortable with the decision to confirm Miss Vassell to the post. The background of the extention was the probationary report to Miss Vassell's performance that was presented to her on November 28, 2006, in a meeting between Mrs. Pringle and Miss Vassell about the review, and a subsequent meeting involving both women, along with the then CEO, Mrs. Lola Fong-Wright.

Excerpt from the performance of Miss Vassell's evaluation report for ninety days (90) probationary report from August 28, 2006 to November 27, 2006 by Tanya Pringle (See Exhibit III):

"Overall Assessment

There has been some difficulty working with her due to her reluctance to accept direction and her insistence on doing things her way. There has also been difficulty in communication with Violet. This has included receiving information and updates on activities and in meeting with her. Her ability to accept change and adapt to different work methods and conditions has created some conflict in the Department. As a member of the CPAD team, it is imperative that the team members complement each other and work together in order to achieve effective activities. It is important to learn to listen to those in the team. Taking into account all viewpoints can make a team stronger and the results better. In this regard, Violet sometimes does not work well with the other people on the job. I have also noted her unwillingness to work effectively as part of the team and instead, attempting to conduct her activities on her own. To be a better team player, I would encourage her to be more willing to compromise and to make more of an effort to get along with other employees. Overall, I have found Violet to be extremely effective at

conducting her duties. It is critical, however, that she pay attention to areas which require improvement in order to achieve the required standards for the position."

'Employee's comments:

'... I have accepted that there are areas of weaknesses in my technical knowledge and skills in preparing press releases, reports and speeches and am looking forward to being trained on the job as well as pursuing academic courses in these areas. However, I must state that I do not understand nor agree with the assessment regarding the area of communication and interpersonal relation with team members as I do not recall ever adamantly imposing my ideas and opinions on the team to the detriment of team work. My vision is always towards working for the ultimate good of the organization.'

Miss Vassell supplemented her comments by rebutting Mrs. Pringle assessment extensively that her communication and interpersonal skills were of concern.

The report titled:

Response to Probation Report, the rebuttal dealt with three areas:

- (a) reluctance to accept direction/ insistence in doing things her way
- (b) dispatching tickets ordered for functions
- (c) difficulty communicating/ difficulty in receiving information/updates on activities.

By letter dated December 19, 2006 Mrs. Pringle responded to Miss Vassell's rebuttal:

'... During my time at the PSOJ, I have sought at all times to prepare performance reviews in an objective manner. I believe that your review was conducted fairly and reflected the performance I have observed during the past three months. I commend you once again on your approach and commitment to work and your ability to perform with limited supervision.

Despite meeting with you on a number of occasions prior to and after the performance review, I regret that you neither understand nor agree with the assessment regarding the areas of communication and interpersonal relations with team members. I stand by

*my probationary report and use this medium to recommend that your probationary period be extended to 27th February, 2007, a possibility outlined in appointment letter dated 24th August, 2006. I regret having to take this decision, **but I am not comfortable at this time with your confirmation to this position in the department. As team leader of the CPAD, it is important to me that the team members are supportive of each other and work well together. It is also critical that I receive the support required to ensure that all duties are conducted at the required standard.***

As clearly outlined in your performance review, your strengths are important skills to an organization such as the PSOJ. I sincerely hope that during the next few months, you and I will be able to come to a point where we can have greater understanding, trust and respect for each other and that this will translate into better communication and cooperation, improved support and interpersonal relations and that you will be confirmed in the position.'

By letter dated February 23, 2007, Mrs. Fong-Wright, CEO and Mrs. Pringle informed Miss Vassell that she had successfully completed her probationary period and her appointment would take effect March 1, 2007. In regards to the assessment for the year January - December 2007 this period took in two (2) months of the last leg of Miss Vassell's probationary period specifically January-February 2007.

Mrs. Tanya Pringle made the following comments about Miss Vassell's performance (see Exhibit X):

- *'More delegation of work - Violet could be even more effective if she were to delegate the simpler duties more often.*
- ***Greater effort paid to more positive interactions with her colleagues and more patience displayed - constructive criticism in a calm and non aggressive manner would greatly improve her relations with other employees. There have been a number of times in which there has been abrasive exchanges between employee and her colleagues.***

- *I regret to note that employee has continued to display hostility and general unpleasantness towards me. During the year, employee made an accusation about me to the former CEO and after a meeting was held, with her agreement to withdraw the accusation and apologise, her apology email left much to be desired. It is also clear that my work priorities are often not Violet's priorities and that certain responsibilities are sometimes not attended to with urgency and these generally relate to duties assigned by myself ...'*

Mrs. Sandra Glasgow's (next level supervisor) comment:

'... She appears to be a loner rather than a team player and this often sets up situation of conflict when there is an expectation of greater levels of teamwork on the part of her Supervisor and her peers ...'

Employee's comment:

"I am not in agreement with comments made by my supervisor about my conduct to her. This is not about a personality issue; I work around people and personality to get the work done. I have had on a number of occasions been to former CEO, Mrs. Fong Wright explaining real and serious problems I was having with my supervisor in the execution of my duties. These issues are not a figment of my imagination or me being vindictive."

The comments from the probationary report and the evaluation covering the period January 2007 to November 2007 continued to be a recurring theme throughout her career at PSOJ. In spite of Miss Vassell's deficiencies she made progress at the PSOJ. On May 31, 2012 she was offered the position of Marketing Manager. The contract would be a period of three(3) years with effect from June 1, 2012. She would be on a probationary period of three (3) months. During this period the PSOJ reserved the right to revert her to Marketing Officer after consideration of her performance in the new position.

As confirmed by letter dated December 4, 2012 Miss Vassell successfully completed her probation. The overall assessment of her probationary report was very good, but there was a need to improve her communication and interpersonal skills which she accepted fully well,

realizing she had to do something about this problem.

The Dismissal:

There was a series of events leading up to the termination of Miss Vassell's employment at PSOJ. It started with complaints from members of staff to the Human Resources Department regarding disrespectful behaviour by Miss Vassell. Similar complaints were made to Mr. Dennis Chung, CEO about her uncomfortable and unprofessional behaviour. On September 13, 2013 Mr. Chung and members of staff from the Human Resources Department had a meeting and decided that an independent mediator was needed.

Dr. Leahcim Semaj, a Consulting Psychologist was contacted and arrangements made for him to attend a staff meeting on the 26th September, 2013.

Dr. Semaj recommended that Miss Vassell have a personality assessment done. After some hesitation on Miss Vassell's part she agreed to do the personality assessment test. Dr. Semaj conducted four (4) assessments during the sessions, namely the Job Bank Personality Profile, the Personality Assessment Screener (PAS), the International Personality Disorder Examination (IPD) and Personality Assessment Inventory (PAI).

In a Psychological Assessment Report on Violet Vassell dated November 8, 2013, Dr. Semaj describe what had occurred at this session. Staff members spoke about the problems they were having with Miss Vassell. In her response it became clear with every sentence her psychological deterioration was evident. As a result the meeting was brought to an end.

After the results were received Miss Vassell was invited to a meeting on November 12, 2013 to discuss the report along with someone in a supportive role but not as a representative since this was an internal inquiry that would be conducted.

Miss Vassell sought time to study the report and respond to it. She opined inter alia that "*if the report was correct the PSOJ would have had a serious problem with her behaviour from the day she started working there. She would not have been promoted and had success in organizing*

events and that throughout her time there was no report of odd behaviour as documented by Dr. Semaj."

Between November, 12 - 15, 2013 several meetings were held to settle the differences between the staff and Miss Vassell, notably, Mr. Chung met with twelve (12) members of staff on November 14, 2013. Those who attended the meeting eleven (11) members of staff indicated that the working relationship was untenable and needed to be resolved.

Another meeting was convened on November 15, 2013 where Miss Vassell was informed of the views of the staff. They told Miss Vassell in no uncertain terms how they felt about their continued relationship with her, going as far as to say they would rather avoid interaction than deal with her. In response, Miss Vassell demanded an apology and that Mr. Chung, CEO speak to five members of staff to establish his authority. She subsequently withdrew that suggestion and suggested the CEO could make any decision he wanted to make.

By letter dated November 20, 2013, Mr. Chung informed Miss Vassell that her service was terminated with immediate effect.

CASE FOR THE AGGRIEVED:

Miss Violet Vassell was employed to the PSOJ in the Marketing Department from August 2006 to May 31, 2012 as Marketing Officer, Media Communication and Events and was promoted on June 1, 2012 to the position of Marketing Manager. Her contract would end May 31, 2015.

In May 2012, the then CEO Mrs. Sandra Glosgow reorganized the Marketing Department and renamed the position of Director of Marketing to Marketing Manager. The vacant position of Marketing Manager was advertised internally as per Human Resources Policy Manual. Two persons applied, Miss Violet Vassell and PetaGay Hodges. After a series of interviews, Miss Vassell was selected and appointed to the post of Marketing Manager.

Miss Vassell's promotion to Marketing Manager caused Miss Nichocie Bryan, the Market Department Administrative Assistant and Miss Petagay Hodges former Membership Officers to

be very resistant and hostile towards her.

Several disciplinary/mediation meetings were held with the CEO, Mrs. Glasgow, the Human Resources Officers, Miss Floyd Burchell and Miss Josephs along with Miss Hodges and Miss Bryan to discuss concerns about the rude and resistant behavior towards Miss Vassell.

Subsequently, Miss Hodges departed from PSOJ and the work environment improved. Sometime between the end of June to July 2013 while in Mr. Chung's office discussing an event Miss Vassell was informed by Mr. Chung that five (5) persons namely Marketing Administrative Assistant, Miss Nichocie Bryan, Public Relations Officer, Miss Kareen Cox, Executive Assistant, Miss Evett Coombs, Human Resources Officer, Paulette Josephs, Project Assistant, Miss Andreen Lee came to him with complains against her. She suggested to the new CEO that a meeting should be held with the complainants to sort things out. This was done and each gave air to their complaint.

Following an incident which occurred on September 13, 2013 an email was sent from Human Resources Officer, Miss Josephs to the staff informing that a meeting will be held on September 26, 2013 with Dr. Leachem Semaj as the Guest Speaker and he would be speaking on harmonious work relations.

This meeting, instead of fostering general discussion it was centered around Miss Vassell with four (4) members of staff levying accusations against her. Dr. Semaj failed to allow Miss Vassell to address the accusations being levied against her.

Subsequently, in a small meeting in the presence of Mr. Chung, Miss Josephs, Dr. Semaj and Miss Vassell, Dr. Semaj pointed at Miss Vassell and said **"you are the problem"** without hearing her account of the accusations being levied against her.

He recommended that if the 'problem is not solved, Dennis (Mr. Chung) would need to take a decision to cut the tape' and suggested Miss Vassell needed some help. Miss Vassell, recognizing that Dr. Semaj position was not neutral and his comments were tainted with bias, did

not want to have anything further to do with him.

On November 4, 2013, Miss Vassell was asked to join a meeting with Dr. Semaj, the Human Resources Officer, Miss Josephs and CEO, Mr. Chung. There, Mr. Chung ordered Miss Vassell to do the assessment by Dr. Semaj and proceed immediately on vacation leave. Miss Vassell did the assessment against her will as the CEO was adamant that she did same. Miss Vassell complied out of fear that if she failed to do so she could be cited for insubordination. Dr. Semaj was asked by the PSOJ to conduct a personality assessment on one person only Violet Vassell. No one else in the PSOJ was asked although five persons were involved in making allegations against Miss Vassell.

Miss Vassell opined that Dr. Semaj produced a very negative report of her. She further submitted that if Dr. Semaj and the persons who submitted the report are correct, then she would have had years of unstable and unsound behaviour in the office.

Miss Vassell further opined that how could someone who have done over (200) two hundred PSOJ events, functions, activities with member companies, DBJ exam and international funding agencies e.g USAID, IDB and CIDA do them so successfully without this odd behaviour surfacing.

Miss Vassell was informed that there would be a meeting to discuss the report. It was agreed that Miss Vassell could take a representative to the meeting but the person could not speak as this was an internal matter. Having been given the report for the first time she informed Mr. Chung that she would like to have her lawyer review it. Miss Vassell resumed work from vacation on November 18, 2013 when she was threatened to have the security guard remove her from the building.

She was informed by telephone to attend a meeting at the office on November 20, 2013 where she met with Mr. Chung and Miss Josephs and was given a termination letter.

TRIBUNAL'S RESPONSE

Having studied the evidence of Miss Violet Vassell's probationary report for the period August 28, 2006 to November 27, 2006 and accepted that **teamwork and partnership** are core values of the PSOJ, then the Tribunal is at a loss as to why Miss Vassell's employment was confirmed.

The Tribunal found the evidence by Mrs. Pringle to be forthright and instructive; hence, the red flags were obvious.

See comments from Probationary Report (August 28 – November 2006) under the heading **Communication and Interpersonal Relations:**

'There have been some difficulties associated with the employee's interaction with others and being an effective team member.'

Red flags under overall comments:

- inability to accept change and adapt to different work method has created conflict in the department.
- a need to learn to listen to those on the team
- taking in view points of others can make a team stronger
- an unwillingness to work effectively as part of the team and instead conducting her activities on her own
- needs to be more willing to compromise and make an effort to get along with other employees.

Also startling is Miss Vassell's response to Miss Pringle's comment. Miss Vassell said '*she did not understand nor agree with the assessment regarding the areas of communication and interpersonal relations with team members.*' It is interesting to note that her response to Miss Pringle's critique was three (3) letter size pages, typed in single space not dealing with the critique but other matters she considered to be the problem. The Tribunal got the impression that Miss Vassell remains clueless as to what was being said by Miss Pringle. So concerned was Miss Pringle that she extended Miss Vassell's probationary period for a further ninety (90) days which would end in February 2007.

Miss Vassell's Performance Evaluation Report for the period January – November 2007 showed no change in her interpersonal relationship with her colleagues. This had Mrs. Pringle commenting on Miss Vassell's performance evaluation report for the period that *'she did not know if Violet is willing to make the necessary changes in her attitude towards her as her supervisor and it has become increasingly difficult for her to work with a team member who is consistently hostile, unsupportive and unpleasant.'*

The evidence showed that within the time she was employed to the PSOJ Miss Vassell's interpersonal relations with her colleagues showed little or no improvement. However, indications are that due to her ability to get the job done in spite of her poor interpersonal skills, the PSOJ thought the risk of keeping her was worth it. This had to be so because in June 2012 she was promoted to Marketing Manager on a three (3) year contract. Having successfully completed a probationary period June 2012 to August 2012 pursuant to the post of Marketing Manager, Miss Glasgow, then CEO commented:

"Violet took the job of Marketing Manager amidst significant opposition from some members of her team. Despite this she has demonstrated why she was promoted in the first place - her steely resolve to perform at the highest levels and to meet her targets no matter what.

The initial objections from some team members (one of whom is no longer with the Organization) revealed some weaknesses in Violet's approach as a Manager and the need for her to receive training and coaching to deal with the challenges that come with leadership. She has already participated in a workshop on "How to Delegate Effectively" and hopefully over time and with continued training and coaching she will improve her managerial skills, particularly in the area of people management, cost control and effective use of the cost analysis worksheet to monitor revenues and costs for all income-generating events."

Under Performance Criteria, **"Communication and Interpersonal Relations"** the following comments were cited:

"This is a major area in which Violet needs to focus her efforts. She must be more aware of how her tone of voice and body language are perceived by her team members and others and be more attuned to how she can effectively communicate with others without creating conflict."

Miss Vassell's response was as follows:

"In the area that needs improvement, I recognize that I have to make a concentrated and determined effort in improving my communication and interpersonal skill and other necessary skill set and have started this change by embarking in relevant cause of study."

The evidence has led to the following conclusion:

1. a probationary period is used to ascertain whether a person is suitable for carrying out a particular task. In the case of Miss Vassell the concept was ignored with consequences.
2. there was no change in Miss Vassell's interpersonal relations with her colleagues between November 2006 the end of her ninety (90) days probationary period and August 2012 the end of another probationary period for the post of Marketing Manager. For almost six (6) years she exhibited the same attitudinal problem of poor communication and interpersonal skills.
3. the comments made on several of her evaluation reports and the evidence of that of Mr. Chung does support that Miss Vassell's attitude did affect her relationship with other members of staff and, hence, the morale of the staff.

The Tribunal notes the defensive attitude of Miss Vassell when her attention was sought about her interpersonal relationship; she remains blameless with the exception of her response to Miss Glasgow's comments at the end of the successful completion of her probationary period for the position of Marketing Manager.

Personality Assessment Report

The Tribunal read Dr. Semaj's report on Miss Violet Vassell and found it informative and in fact does corroborate some of the evidence submitted by the PSOJ in support of its position.

However, the matter of her poor interpersonal skills had been cited in her probationary report for the period August 2006 to November 2006 so much was her supervisor, Miss Pringle's concerned that she extended her probationary period but subsequently made her permanent and promoted her.

Dr. Semaj's report would have been more relevant if Miss Vassell's interpersonal skills were never an issue at the inception of her employment with the PSOJ, but appeared in the course of her employment.

Disciplinary Procedures vis-a-vis- Disciplinary Action

Before investigating the dismissal of Miss Vassell it seems appropriate to look at and recognize the importance of procedures in disciplinary issues (**Collins Dictionary and Thesaurus** define procedure as "a way of doing something especially the correct or usual one)."

To bring clarity to this matter the Tribunal will seek guidance from the following authorities:

Halsbury on Employment at page 483, see also IDT award 16/2007

Procedural Fairness

"The overall test of fairness includes the concept of procedural fairness so that a dismissal may be unfair because an unfair procedure was adopted, even though the employer had a sound substantive reason for his dismissal. There is no statutory obligation on an employer to have a formal disciplinary procedure but the existence of such a procedure is highly desirable and in any event certain minimum standards are likely to be expected of the employer even in the absence of a written procedure. Although the rules of natural justice do not apply directly to form an independent ground on which a decision to dismiss may be attached, a breach may be an important matter when an employment tribunal is considering the overall fairness of a dismissal.

A breach in procedure is merely one of the factors to be taken into account, but the House of Lords has placed renewed emphasis on procedural fairness so that it is likely that breach of procedure will make a dismissal unfair; and the former rule that, if the breach of procedure in fact made no difference, then the actual dismissal could be held to have been fair has been disapproved."

A procedure is employed to process a particular task and when not applied as required the process in achieving that task can be compromised. In this case, a disciplinary procedure is expected to be followed in order to achieve a fair outcome and to attempt to carry out a process outside the required procedure will compromise the outcome.

Hence, under Disciplinary Code and Procedures in the PSOJ Human Resources Policy and Procedures Manual page 41 it states:

'... The disciplinary policy and procedures aim to ensure fair and transparent mechanisms for deciding issues relating to misconduct. It is expected that employees subject to disciplinary action will be dealt with fairly and consistently.'

It goes on to state:

'In the interests of natural justice the procedure requires that an employee should be made fully aware of any allegations made against him/her, that he/she should have ample opportunity to state his/her case, and that all Directors/HODs operating the procedure should do so in good faith.'

Section 8:10 The Disciplinary Committee Procedure

This Procedure lays out the procedures to be followed:

- *The HOD/employee making the allegations will be called for questioning*
- *Any supporting witness of the HOD/employee*
- *The employee facing disciplinary proceedings*
- *Any supporting witness of the employee*
- *Any other relevant employee may be called as witness*

Section 8:11 *The Right to be Accompanied*

All employees have the right to be accompanied and supported at any Disciplinary Committee Hearing by another employee.

The importance of a procedure is also enshrined in the Labour Relations Code.

Section 3(1) of the Labour Relations and Industrial Disputes Act state the following:

The Minister shall prepare and lay before the Senate and the House of Representatives, before the end of the period of one year beginning with the 8th April, 1975, the draft of the labour relations code, containing such practical guidance as in the opinion of the Minister would be helpful for the purpose of promoting good labour relations in accordance with:-

(a) ...

(c) the principle of developing and maintaining good personnel management techniques designed to secure effective co-operation between workers and their employers and to protect workers and employers against unfair labour practices."

Section 3(4) of the act mandated the Tribunal to refer to the code in the settlements of disputes:

*"A failure on the part of any person to observe any provision of a labour relations code which is for the time being in operation shall not of itself render him liable to any proceedings; but in any proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or a Board to be relevant to any question arising in the proceedings **shall** be taken into account by the Tribunal or Board in determining that question."*

The operative word being **shall**.

The Tribunal will refer to **Section 22 of the Labour Relations Code** which states the following:

“22) Disciplinary Procedure

(1) Disciplinary Procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:-

- (a) ...*
- (b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
- (c) give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
- (d) provide for a right of appeal, wherever practicable, to a level of management not previously involved;*
- (e) be simple and rapid in operation.”*

In the case of Miss Violet Vassell, the termination process was not correctly followed. Her dismissal breached the PSOJ's Disciplinary Procedure laid out in its handbook as well as the Labour Relations Code.

There was no proper format established for a hearing.

Comments:

In spite of Miss Vassell's deficiency in her communication and interpersonal skills, the PSOJ was aware of these flaws from the inception of her joining the organization. After serving a six (6) month probationary period the management was exposed to these issues for approximately six to seven years. Of interest she proved herself a good employee in executing the tasks which led to her being promoted on occasions. Clearly she would not have foreseen an abrupt end to her employment.

Whatever flaws she may have had for the next eighteen (18) months could have been at least put on hold.

In light of the above, the procedure employed to terminate the employment of Miss Violet Vassell was not followed.

- (i) No written charge was made out in writing to Miss Vassell that would have required her to defend herself
- (ii) There was no evidence submitted to support the charge. If the PSOJ had intended to use Dr. Semaj's report to support its decision to dismiss Miss Vassell, then he should have been invited to a hearing and have him open himself to questions from Miss Vassell if she so desired.

Members of staff who were invited to a meeting on the 14th November, 2013, to air their opinions about Miss Vassell were in no way participating in a proper hearing. Eleven (11) members of staff said they had difficulty working with Miss Vassell, yet, when Mr. Chung requested that their complaint be made in writing he got no response. These eleven (11) persons should have individually made themselves available to answer questions from Miss Vassell with respect to their complaints. A written complaint would have assisted the process, Miss Vassell was invited to a meeting on November 12, 2013 to "discuss" Dr. Semaj's report. She was informed she could bring a representative although this person could only attend in a supportive role and not as her representative as this was an internal enquiry.

In this case a discussion on the subject matter was not a hearing. The format for a fair and proper hearing was not being observed.

Based on the above, the Tribunal therefore finds that Miss Vassell was unjustifiably dismissed.

The Tribunal took into consideration the fact that Miss Violet Vassell was employed on a fixed term contract agreed between the parties which would have expired on May 31, 2015. The Tribunal does not possess the power to extend this fixed term contract beyond the expiry date stated in the Contract of Employment which has now passed and therefore does not order reinstatement as was requested by Miss Vassell.

The Tribunal therefore awards accordingly.

AWARD:

The Tribunal awards that Miss Violet Vassell be compensated with fifteen (15) months normal salary.

DATED THIS 21st DAY OF DECEMBER, 2015



Donovan Hunter
Chairman

Trevor Graham J.P.
Member

Clinton Lewis
Member

Witness:

Royette Creary (Miss)
Secretary to the Division