

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 45/2017

SETTLEMENT OF DISPUTE

BETWEEN

RURAL AGRICULTURAL DEVELOPMENT
AUTHORITY

AND

MS. ALLISON SMALL

AWARD

I.D.T. DIVISION

MISS MARSHA SMITH

- CHAIRMAN

MR. LESLIE HALL J.P.

- MEMBER

MR. CLINTON LEWIS

- MEMBER

April 28 2020



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INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
RURAL AGRICULTURAL DEVELOPMENT AUTHORITY
AND
MS. ALLISON SMALL

REFERENCE:

By letter dated August 10, 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 (hereinafter called “ the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute describe therein:-

The Terms of Reference were as follows:

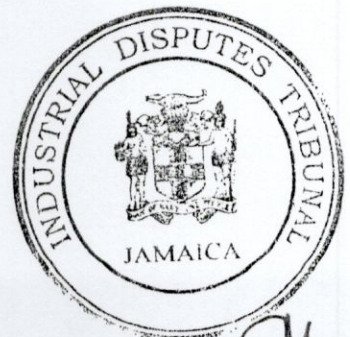
“To determine and settle the dispute between Rural Agricultural Development Authority on the one hand, Ms. Allison Small on the other hand over the termination of her employment.”

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 Marsha Smith
Mr. Leslie Hall J.P.
Mr. Clinton Lewis

- Chairman
- Member, Section 8 (2) (c) (ii)
- Member, Section 8 (2) (c) (iii)



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REPRESENTATIVES OF THE PARTIES:

The Company was represented by

Mr. Robert Collie	- Attorney-at-Law
Mr. Lemar Neil	- Attorney-at-Law
Miss Deonne Samuels	- Attorney-at-Law
Miss Bridgette Williams	- Senior Director Human Resource Management & Administration

The Aggrieved Worker, Ms. Allison Small was represented by:

Mr. Rudolph Thomas	- Industrial Relations Consultant
Miss Avandeer Ross	- Assistant Industrial Relations Consultant

In attendance:

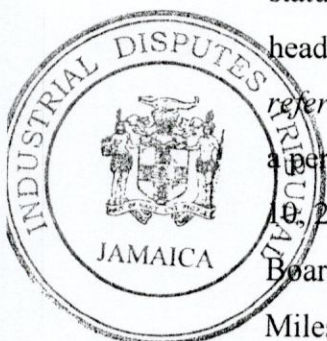
Mrs. Allison Small	- the Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during nineteen (19) sittings held between November 1, 2017 and October 26, 2018.

BACKGROUND

1. Rural Agricultural Development Authority (*hereinafter referred to as the Company*) is a statutory body established under the Rural Agricultural Development Authority Act. Its head office is located at Hope Gardens, Kingston 6. Ms. Allison Small (*hereinafter referred to as the Aggrieved Worker*) was employed to the Company on May 4, 2015 for a period of six months in the first instance as a temporary Senior Secretary. On December 10, 2015, the Aggrieved Worker's immediate supervisor, Mrs. Celia Miles (the Director, Board Secretariat) spoke to her about her early quitting. On December 14, 2015, Mrs. Miles gave the Aggrieved Worker a written reprimand/warning regarding her early



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quitting. The Aggrieved Worker tore up her copy of the written warning out of the sight but within the hearing of her supervisor. Mrs. Miles later retrieved the torn warning from the Aggrieved Worker's waste basket and brought to the attention of the Chief Executive Officer (CEO) of the Company, Mr. Lenworth Fulton, the fact that the Aggrieved Worker tore up the written warning. Mr. Fulton directed that disciplinary action should be taken in relation to the Aggrieved Worker. The Aggrieved Worker was notified in writing by way of a letter dated December 18, 2015 of the charges of (1) Gross misconduct; (2) Gross insubordination to a Senior Officer; (3) Early Quitting or unpunctuality except where approved by the officer in charge and (4) Failure to comply with a reasonable instruction given by a Supervising Officer. A hearing was held on January 6, 2016. The disciplinary committee found the Aggrieved Worker Guilty of Gross misconduct, Gross insubordination to a Senior Officer and Early Quitting. The committee found the Aggrieved Worker Not Guilty of Failure to comply with a reasonable instruction given by a Supervising Officer. The penalty recommended by the committee was suspension for twenty days without pay and a letter of reprimand, with Human Resource and the CEO to take the final actions. By way of a letter dated January 7, 2016, the Aggrieved Worker's employment was terminated by the Company's CEO on the basis that her contract as a temporary Senior Secretary was not being renewed. The letter is set out below: -

"January 7, 2016

RA/2/7/P/S-167

Mrs. Allison Small

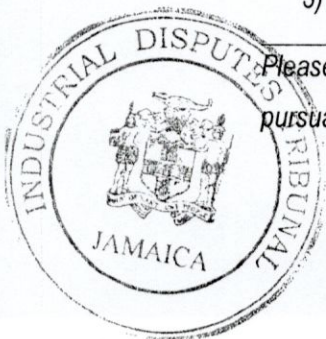
1 Red Hills Boulevard

Kingston 20

Dear Mrs. Small,

Re: Termination of Employment & Non-Renewal of your Temporary Position as Senior Secretary (OPS/SS 3) pursuant to the Fixed Term Contract of Employment

Please be advised that your temporary position as Senior Secretary (OPS/ SS 3) which came into effect pursuant to the fixed term contract of employment dated May 4, 2015, for a period of six (6) months in the



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first instance, will not be renewed despite you having been permitted to continue to work in that position after its expiration.

The decision not to renew your temporary fixed term contract emanates from the recent findings of the Disciplinary Committee with respect to the Disciplinary Hearing which was held on January 6, 2016 in the RADA Conference Room. The Disciplinary Hearing was held in accordance with Regulation 19(a) of the Second Schedule of the Public Service Regulations, 1961 (with amendments up to October 24, 1995), a copy of which is enclosed. At the hearing you were found guilty of Misconduct. Additionally, you were also found guilty on two (2) other charges as follows:

- *Gross Insubordination to a Senior Officer; and*
- *Early quitting or unpunctuality except where approved by the officer in charge.*

On the basis of these findings, the Authority has determined that your conduct was unsatisfactory.

In light of the foregoing, your services are hereby terminated with immediate effect and you will not receive a subsequent contract of renewal of your employment. Accordingly, you will be paid one month's salary in lieu of notice.

We wish you all the best in your future endeavours.

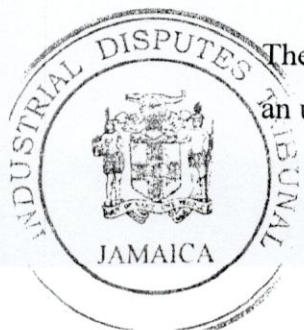
Please return all properties belonging to Rural Agricultural Development Authority (RADA) that was assigned to you during your tenure.

Kindly acknowledge receipt of this letter and its enclosure by signing, dating and returning to us the attached copy letter.

Yours faithfully,

*Lenworth Fulton
Chief Executive Officer"*

The Aggrieved Worker protested her termination firstly by requesting an appeal by way an unsigned letter dated January 21, 2016 and an email dated January 26, 2016 both



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addressed to the chairman of the Company's board. She later sought the assistance of the Ministry of Labour and Social Security to settle the dispute between herself and the Company. No resolution was reached, and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE

2. The Company called five (5) witnesses in support of its case namely Mr. Webster Wilberforce McPherson, consultant agronomist, Mr. Glenville Hall, a plant specialist, Mrs. Celia Miles, the Director-Board Secretariat, Mr. Owen Barrett, the IT Manager and Miss Bridgette Williams, the Senior Director Human Resources Management & Administration.
3. The first witness Mr. Webster Wilberforce McPherson, consultant agronomist employed to the Company, testified that he was the chairman of the disciplinary committee that heard the charges against the Aggrieved Worker on January 6, 2016. The matter was referred to the committee by the Senior Director of Human Resources Management & Administration, Miss Bridgette Williams. The complainant (Mrs. Celia Miles) and the Aggrieved Worker were called into the hearing. The charges were read out to the Aggrieved Worker and she was asked for her response. She replied that she was not guilty. The complainant was asked to state her case and thereafter, she was questioned by members of the disciplinary committee. The Aggrieved Worker was asked to respond to the charges. She did not dispute that she tore up the written warning given to her by Mrs. Miles, but she denied leaving at the time Mrs. Miles said. The committee found that she was guilty of Gross Misconduct, Gross Insubordination to a Senior Officer and Early Quitting or Unpunctuality except where approved by the officer in charge. She was found not guilty of Failure to comply with a reasonable instruction given by a Supervising Officer. The recommended penalty was twenty days suspension without pay with a letter of reprimand, with the final decision being taken by Human Resources and the CEO.
4. During cross-examination Mr. McPherson said he was a Justice of the Peace and a trained Lay Magistrate. He was comfortable with the competence of the Disciplinary Committee and with the recommendation that the committee made for suspension. The



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recommendation was fair and reasonable and in keeping with the disciplinary code. He however, said that the termination of the employment of a temporary worker found guilty of an offence, was the prerogative of the CEO of the Company. The CEO had the prerogative to terminate the employment of temporary employees without hearing based on the Staff Orders for the Public Service. He agreed that the memo written to the Aggrieved Worker was a disciplinary measure taken by Mrs. Miles for early quitting. He disagreed that early quitting was already dealt by that memo as at the hearing Human Resources submitted the Aggrieved Worker's attendance record to show that her early quitting was a regular practice. He was shown the minutes of the disciplinary hearing and he said that the minutes did not reflect all the documents that were submitted at the hearing nor the fact that the Aggrieved Worker was questioned in relation to subsequent early quitting. He said that the charges were designated by Human Resources.

5. In response to questions from the Tribunal Members, he said that the Aggrieved Worker did not bring a representative to the hearing and that the Committee did not enquire if she had one. The Committee made a recommendation, but the Company's disciplinary manual said that the CEO had the final authority.
6. The Second Witness was Mr. Glenville Hall, a plant specialist employed to the Company. He testified that he was a member of the disciplinary committee that heard the charges against the Aggrieved Worker. Both the Aggrieved Worker and Mrs. Celia Miles were given a chance to speak at the hearing. Mrs. Miles spoke first then the Aggrieved Worker was asked to respond. She pleaded Not Guilty. After her evidence she was questioned by the disciplinary committee. He said that an Attendance Report for the Aggrieved Worker dated January 4, 2016 (Exhibit 4) was produced at the disciplinary hearing. After both parties made their presentations and were questioned, they left the hearing room and the committee came together and made a decision. The committee was guided by the staff manual in terms of the penalty.
7. During cross-examination he said that the minutes did not capture all the salient points of the hearing but most of them were captured. He said he received a package of documents prior to the hearing and assumed that everyone got one.

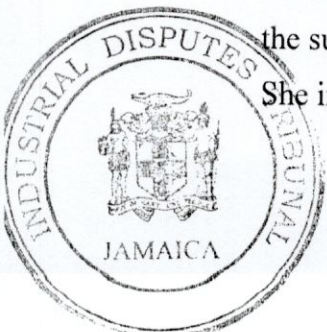
8. The Third Witness was Mrs. Celia Miles, the Director- Board Secretariat at the Company. She testified that the Aggrieved Worker was a temporary secretary assigned to her. The



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Aggrieved Worker came to her on rotation from another department and initially she had a good relationship with her. However, there were instances she, Mrs. Miles, would be working outside of her office and on her return, the Aggrieved Worker would not be in the office. This was done without following the protocol of speaking to one's direct supervisor or calling HR, before being out of office. She spoke to the Aggrieved Worker about this behaviour four or five times. The last occasion she spoke to the Aggrieved Worker was December 10, 2016, when the Aggrieved Worker picked up her bag and told her she was leaving as everyone else was leaving. On that day there was to be an office function in the evening. She did not see the Aggrieved Worker at the function. The following day she listened out for an explanation from the Aggrieved Worker as to why she did not attend the function. On December 14, 2015 she wrote the Aggrieved Worker a letter of reprimand by way of a memorandum and she left the memorandum on the Aggrieved Worker's computer keyboard. She told the Aggrieved Worker about ten (10) minutes later that she left a letter on her keyboard. Mrs. Miles said that her office door was open, and she heard the Aggrieved Worker hiss her teeth and tear up the letter. She spoke to the Principal Director of Corporate Services Mrs. Winsome Phillips, about what happened, and she wrote a letter to the CEO, Mr. Lenworth Fulton. Afterwards she got correspondence that there was to be a disciplinary hearing. She was invited to speak at the disciplinary hearing at a point in time on January 6, 2016. Both she and the Aggrieved Worker were given an opportunity to speak. She was questioned by members of the disciplinary committee and by the Aggrieved Worker. A copy of the Aggrieved Worker's dismissal letter was sent to her.

9. During cross examination she said that secretaries at the Company are on rotation to become more familiar with the operations of the Company. On December 10, 2015 the Aggrieved Worker said to her that everyone was leaving and that she was leaving as well. She told the Aggrieved Worker that she needed to say something to her before leaving. The Aggrieved Worker's response to her was that she was telling her now. She did not have an opportunity to comment as the Aggrieved Worker had already taken her bag and walked through the door. She viewed the written warning as discipline. She agreed with the suggestion that in relation to early quitting that discipline was already administered. She insisted that she heard the Aggrieved Worker hiss her teeth. She admitted that she did



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not see the Aggrieved Worker tear up the letter of reprimand and that she found the letter in a rubbish bin. Her office door was open and so she heard the hissing. She did not intend for the matter to go this far and left it to the CEO to handle.

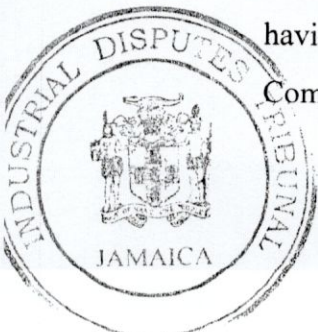
10. She was questioned by the Tribunal Members. She said the tearing up of the letter was insubordination. It showed disdain and disrespect to her. Her understanding of insubordination was disrespect to one's supervisor.
11. The Fourth Witness was Mr. Owen Barrett, the IT Manager at the Authority. He testified that he was the Company's system administrator that managed the attendance system. The software used is called BIOSTAR Time and Attendance. Once someone is employed to the Company, the employee is provided with a time/attendance swipe card and enrolled in the system. The system takes into account the first and last swipe each day. He produced a report of the Aggrieved Worker's attendance record. This report was generated by him on November 11, 2017 and was admitted as Exhibit 9. During cross-examination he said that he could not say if the report he generated on November 11, 2017 (Exhibit 9), aligned 100% with the report that used at the disciplinary hearing, Exhibit 4.
12. The Fifth Witness was Miss Bridgette Williams, the Senior Director, Human Resource Management & Administration. She stated that the Aggrieved Worker was hired on a temporary contract of employment. At the time of the Aggrieved Worker's termination there was no position that she could have been appointed to and this was still the position up the time of her evidence at the Tribunal. In December 2015 the situation involving Mrs. Miles and the Aggrieved Worker came to her attention. She received a copy of a memo written by Mrs. Miles to the CEO. The CEO instructed her to convene a disciplinary hearing. She wrote to the Aggrieved Worker a charge letter dated December 18, 2015. A hearing was originally scheduled for December 29, 2015. It was not held as the Aggrieved Worker wrote to say that she was unable to attend. The hearing was rescheduled to January 6, 2016.
13. She was involved in the disciplinary hearing by virtue of her position. She sat in the hearing and she was involved in serving on the disciplinary committee. Mrs Miles stated her case first then the Aggrieved Worker stated hers. Both women were present at the same time. The Aggrieved Worker was not represented but she was given the option to



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appoint a representative. The disciplinary committee questioned both women. The documents presented to the panel included letters and attendance records. She said that Exhibit 4 was the Excel version of the report Exhibit 9. Exhibit 4 was the document shown to the disciplinary committee and Exhibit 9 was the IT version. She could not recall if the Aggrieved Worker got a copy of Exhibit 4.

14. After deliberations the committee found the Aggrieved Worker guilty on three charges and recommended suspension. She prepared a report of the hearing for the CEO. The disciplinary committee only had power to make a recommendation of the sanction. The CEO had the final say and it was open to him to reject or accept the recommendation. The CEO decided not to renew the Aggrieved Worker's temporary contract. There was no written contract and therefore suspension could not be used. He sought advice from the Office of the Services Commission and the Legal officer of the Ministry of Agriculture & Fisheries.
15. Miss Williams said that a temporary worker could only be appointed to a permanent position if the post was vacant. At the time of the Aggrieved Worker's termination there was no vacancy. There was no written contract to stand on and so the CEO decided to terminate. He signed the letter of termination with one month's pay, because the Aggrieved Worker was terminated immediately. She prepared the termination package for the CEO. She was told by Accounts that the one month's notice pay cheque remains uncollected by the Aggrieved Worker.
16. She received an email from Miss Marlene Roper of the Office of the Services Commission dated December 21, 2015, (Exhibit 11). In that email the Company was exposed to Regulations 19(a) & 19(b) of the Staff Orders for the Public Service. The email stated that the easiest method to have terminated the Aggrieved Worker's temporary employment would have been by virtue of Regulation 19(b) rather than by Regulation 19(a) and further suggested that the Company continue with the disciplinary hearing for reasons of fairness and due of process of law. The Company also got advice from the Senior Legal Officer of the Ministry of Agriculture and Fisheries by way of letter dated December 22, 2015 (Exhibit 12). That letter also advised that the Company having embarked on the process of enquiry, follow through with same for fairness. The Company acted on the advice it received.



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17. During cross examination she stated that temporary employment did not guarantee permanent appointment. She admitted that she was a party to the hearing, executed the charge letter and sought legal advice on behalf of the Company. She detailed the steps she had taken prior to the hearing inclusive of preparing the charges. It was put to her that she played too many roles in the process for it to be fair. She said that the suggestion was incorrect and that it was quite ok to so proceed. She said that outside of Exhibit 4 the other evidence of early quitting was the testimony of Mrs Miles. She also said that the gross misconduct was the Aggrieved Worker's behaviour when she tore up the letter, hissed her teeth and walked out of the office.
18. She said that the charges were a part of the investigation. The disciplinary hearing was to further investigate the charge. In the laying of the charge the Aggrieved Worker was offered an opportunity to respond. The hearing was trying to find out if the charge was confirmed. It was a part of the investigation; the hearing was not conclusive. Once there was a recommendation then it was for the CEO to make the final decision. She said that committee was proper and competent and that it was reasonable for the CEO to have accepted or rejected the committee's recommendation. The situation was complicated because the Aggrieved Worker was temporary. Most the of Company's procedures applied only to permanent employees. It was reasonable for the CEO to reject the recommendation of the disciplinary committee. The CEO was guided by the Public Service Regulations. She agreed that the Company was guided by the Public Sector Wage Agreement, but she could not recall if that Agreement speaks to temporary workers.
19. She was asked questions by the Tribunal Members. She said that at the hearing she asked questions of the Aggrieved Worker. She was aware that the Mrs. Miles had written to the Aggrieved Worker. She did not change anything on Exhibit 4. She just added the dates and the highlighting.

THE COMPANY'S CONTENTIONS

a) The Aggrieved Worker's letter of employment stated that her employment was for six months in the first instance. Notwithstanding that there was a period between the



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expiration of her contract and the date of termination, at no time was the Aggrieved Worker issued a letter of appointment to a vacant post.

- b) The Aggrieved Worker, as an employee of the Company was bound by the Code of Conduct. The Code allows her to be dismissed if she is found guilty of misconduct.
- c) It was the Aggrieved Worker's early quitting and her acts of blatant disrespect to authority as a result of a mere reprimand (presented by way of Memo dated December 14, 2015) that caused her to come before the Company's disciplinary committee.
- d) Her acts of misconduct, exhibiting insubordination in ripping up correspondence from her supervisor in the presence of other staff, her attitude towards her supervisor, total disregard for rules in relation to her working hours in particular and the failure to report to her supervisor if she had to leave before the work day had ended, fell below the level of professional conduct and personal integrity required in the performance of her duties as required by the Staff Orders of the Public Service. This was the conclusion of the disciplinary Committee after hearing the Aggrieved Worker.
- e) The fact that the Aggrieved Worker was extended the opportunity for a Disciplinary hearing, despite the fact that her contract had ended at least one month before, was an attempt by the Company to ensure that the treatment of the Aggrieved Worker was above what was required under the Staff Orders. It must be acknowledged that to dismiss the Aggrieved Worker without cause would not have caused any injustice as she was temporary worker.
- f) The Company allocated time and resources to ensure that justice was not only done but that it was seen to be done and even sought advice from the Ministry of Agriculture (as it then was) to guide its decision in the circumstances.
- g) The Aggrieved Worker was a temporary worker. Regulation 19(a) of the Second Schedule of the Public Service Regulations permits an authorized officer to dismiss a temporary worker by giving requisite notice or payment in lieu of notice, without an enquiry. As per the termination letter the Aggrieved Worker was terminated and offered one month's salary in lieu of notice.

h) In the circumstances the Company sought and acted on sound legal advice. It did not act arbitrarily, nor in a manner that was inconsistent with the Law, being the Public Service



Regulations, the Labour Code, the Labour Relations and Industrial Disputes Act, the Staff Orders and the Company's Policy and Procedure Manual.

- i) Based on the legislative framework, the Company did not have to host a disciplinary hearing in this matter, as the Aggrieved Worker was a temporary worker, not appointed, and so could be terminated from her position with two weeks' notice. However, in the interest of fairness and natural justice, a hearing was held. In the circumstance where the Aggrieved Worker was found guilty of three of four charges, there would have been no basis upon which to extend or renew her contract.
- j) The time for appeal had lapsed.
- k) The Authority operated on sound legal advice from several parties and the CEO acted on that information in good faith.
- l) It should be declared that in the circumstances that the Aggrieved Worker's termination was proper.
- m) It would be improper to seek to reinstate the Aggrieved Worker to the position from which she was terminated, as a consequence of findings of guilty of three of four charges laid against her, based on the findings of the Disciplinary Committee, she is deemed an improper person to continue in the post.

THE AGGRIEVED WORKER'S CASE:

- 20. The Aggrieved Worker gave evidence on her own behalf and the Tribunal issued a summons on the request of the Aggrieved Worker, to compel Mrs. Winsome Grace Phillips, the Principal Director for Corporate Services for the Company to give evidence.
- 21. Mrs. Phillips testified that prior to being appointed the Company's Principal Director for Corporate Services, she was the Company's Director of Human Resources Management and Administration. She was familiar with the Aggrieved Worker and was aware of the issue relating to her. She said she was aware of the circumstances of the Aggrieved Worker's employment. There were several vacancies at the Company and she and Miss Bridgette Williams were part of the panel that interviewed the applicants including Aggrieved Worker. She was shown the Aggrieved Worker's employment letter. She stated that a letter of temporary engagement was written differently from a fixed term

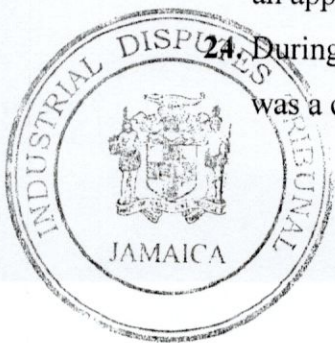


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contract and that the use of the words "six months in the first instance" in the Aggrieved Worker's employment letter meant that continued employment would be based on performance. To assess performance, an appraisal is done by the supervisor and thereafter it goes to the Senior Director of Human Resources and the Office of Corporate Services, then to the Promotion committee and thereafter a recommendation is made to the Chief Executive Officer of the Company. She was aware that an appraisal was done for the Aggrieved Worker. She had seen it before as she was formerly the Chairman of the Company's Promotions Committee. After she received the appraisal, the CEO changed the members of the Promotions Committee. She returned all appraisals in her possession to Miss Bridgette Williams. She did not know what happened after with the Aggrieved Worker's appraisal.

22. She explained the disciplinary and grievance procedure at the Company and was then shown the memo written by Mrs. Miles to the Chief Executive Officer. She said based on the Company's policy, it was her opinion that the contents of the memo were not misconduct nor gross insubordination. She had been a practitioner of HR for over twenty-five years and in her opinion none of the charges laid against the Aggrieved Worker carried a penalty of termination for the first offence.
23. She said the role of Senior Director- Human Resources Management and Administration at the hearing was to assist the disciplinary committee. The Senior Director- Human Resources Management prepares the matter for the disciplinary committee and the Chairman of the disciplinary committee oversees the hearing. She said that Human Resources is a part of the process but not a deciding factor of the process. The roles are distinct for the meeting. Once a decision made, it is then passed to the Senior Director- Human Resources Management, who makes final comments to the Chief Executive Director for a decision. She said based on her knowledge the case, the Aggrieved Worker was terminated by way of dismissal not because of her contract expiring as it was not a fixed term contract. She said that the Chief Executive Officer can override the decision of the disciplinary committee. She said that another tier of recourse the employee had was an appeal to the Board Chairman.

24. During cross-examination she admitted that she knew the Aggrieved Worker from she was a child about twenty-five (25) years and that she was also associated with her



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through church. She agreed that she shortlisted the Aggrieved Worker for the job as a temporary Senior Secretary and that the Aggrieved Worker started to work a month earlier than the other prospective persons. She explained she and Miss Bridgette Williams discussed the Aggrieved Worker coming earlier as Miss Williams had no secretary. She denied the suggestion that there was no consultation with Miss Williams to bring in the Aggrieved Worker earlier than planned. She was grilled about the Aggrieved Worker's appraisal. She denied that she withheld the appraisal from Miss Williams. She agreed that there was no issue with HR being a member of the disciplinary committee in the context of the Company.

25. She was unaware of how the Aggrieved Worker came into possession of the memo of reprimand and denied providing a copy to her. She denied giving counsel to the Aggrieved Worker. She said she was aware of the Public Service Regulations as it related to temporary employees and discipline. She agreed that the CEO could terminate based on the Regulations and the contract, but she insisted that giving one month's notice as per the contract was not enough for termination, as she was of the view that there had to be grounds for termination and a hearing. She was unable to say whether there were any vacancies when the Aggrieved Worker's contract came up for consideration. She agreed that there was no vacancy in the position of Senior Secretary to the Director/Board Secretariat. She said it was not unusual for persons to be temporary beyond six (6) months. It was her opinion that temporary employees were subject to the Company's policies.

26. She stated that she was familiar with the disciplinary and appeal process of the Company. She agreed that the time for an appeal was ten (10) working days. She admitted that the letter of appeal was dated January 21, 2016 and that there were fourteen days between January 7, 2016 and that the letter was not signed, nor was it sent through the CEO. She admitted that there were 19 days between January 7 and January 26, the day that the Aggrieved Worker sent an email to the Chairman of the Company's board. She agreed that both documents were outside of the ten days allowed for an appeal and that neither documents were sent through the CEO in keeping with the Company's manual.



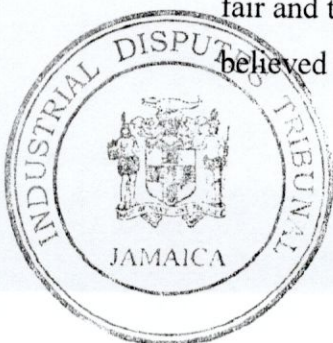
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27. She said she had an excellent relationship with the CEO and that he was a good and reasonable man. She was not offended when she was no longer the chair of the Promotions Committee as she was a team player.
28. During re-examination she repeated that Miss Williams was the one who called in the Aggrieved Worker a month early. She said she was aware of vacancies at the Company and that the position the Aggrieved Worker held temporarily had been filled since her termination. She was shown for a second time the letter of appeal dated January 21, 2016 and stated that it fulfilled the ten working days deadline for an appeal of the termination on January 7.
29. She was questioned by the Tribunal Members. She said that the Staff Orders were for Jamaican civil servants. The employees of the Company were public servants not civil servants. The Staff Orders were not relevant to the Company as the Company had its own manual.
30. The Aggrieved Worker testified that she was employed to the Company from May 4, 2015 until January 7, 2016. She was initially assigned to the Human Resource Management Department. On June 3, 2015 she was assigned as the secretary to the Director-Board Secretariat, Mrs. Celia Miles. Her relationship with Mrs. Miles was good. On December 10, 2015 she was leaving work at 3:00 pm in order to prepare attending the Company's 25th anniversary banquet. Mrs. Miles stopped her and asked why she was leaving. She told Mrs. Miles that she was going home to prepare for the function and that other staff members had already left. She told Mrs. Miles, "See you later" because she was going to prepare for the function and so would see her later. She did not go to the function as she went to look for a friend who had lost a child. Mrs. Miles was not at work on 11th of December 2015. On the 14th of December 2015, Mrs. Miles called her to her office. Mrs. Miles told her she had left something on her desk. It was a memo from Mrs. Miles addressed to her titled "*Breach of Office Protocol*". She read the contents of the memo but did not agree with its contents. The memo stated it was a first warning.
31. She was asked to attend a disciplinary hearing on January 6, 2016. Mrs. Miles was asked questions first. She was asked questions after. Every time she tried to answer the questions, she was told to shut up. She was not in a position to defend herself and she



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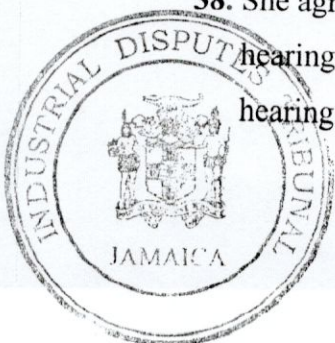
- went through the motions. She knew she did not have a fighting chance based on the demeanour of the disciplinary panel. The hearing lasted about forty-five (45) minutes.
32. She recalled tearing up her copy of the memo dated the 14th of December 2015. She read and saw that it was a warning. She knew that a copy would be on her file. She disposed of her copy as she did not see the need to take it with her. She said that the attendance record (Exhibit 4) was not shown to her at the hearing even though Miss Bridgette Williams had the attendance record in the hearing. She was not asked to comment on the attendance record at the hearing. She insisted that on the day of the banquet on the 10th of December 2015 the designated leaving time was mid-day. She heard Miss Bridgette Williams telling her secretary that leaving time was mid-day. She pled not guilty to all the charges at the hearing.
33. She said that she understood her employment letter to be saying that she was on six (6) months' probation. She said her performance appraisal was completed by Mrs. Miles on October 16, 2015. She believed the appraisal to be saying that she was recommended and had passed the probation. She said her performance rating was above average. She disagreed that her employment was temporary. She also disagreed that her six months contract came to an end as she continued to work with the Company up to January 7, 2016. Before the disciplinary matter came up, no one indicated that her contract of employment had expired. She said that she believed that after November 3, 2015 she was approved for the position of Senior Secretary.
34. She said that she was not paid one month pay in lieu of notice. She returned all properties belonging to the Company save and except a key she had cut with her own money. She was shown a letter dated January 21, 2016 (Exhibit 15) and an email dated January 25, 2016 (Exhibit 19), both addressed to the Board Chairman, Dr. Richard Harrison, requesting an appeal. She got no response to her appeal requests. She sent an email to Dr. Harrison after she received no response to her letter dated January 21, 2016.
35. She said the termination had affected her financially and personally. She has sought to mitigate her circumstances by seeking employment. She stated that the hearing was not fair and that she did not agree with the findings. Her termination was not fair. She believed it would be fair for the Company to restore her to her post. She knew there were



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vacancies at the Company. She wished to be reinstated with payment of all emoluments, increases and leave entitlement, together with interest.

36. During cross-examination she said she heard about the job at the Company through a family friend. She said it was not Mrs. Winsome Phillips who told her about the job. She knew Mrs. Phillips through church as she was her church sister. She said she only knew of Mrs. Phillips working at the Company on the day of the interview. She said that when she disposed of the memo in the garbage, she did not know that Mrs. Miles would retrieve it. She said that she was unable to get lawyer to represent her at the hearing, as it was the Christmas break. She disagreed with the suggestion put to her that she was given an opportunity to respond to the charges. She said she did not have sufficient time to seek advice. She insisted that she left early with permission on December 10, 2015. It was put to her that she was not permanently appointed. She responded by saying that based on her understanding she was permanently appointed and had been on probation for six (6) months. She said she was not expecting another letter after the letter of May 4, 2015.
37. She said she was familiar with the Company's policy and procedure manual and that she understood the circumstances in which she could be terminated. She had come across Company's policy on summary dismissal. She said one could be summarily dismissed if misconduct was committed. She understood insubordination. She said that on the day of the function she had permission to leave. She said understood that the memo was a reprimand. She read its contents and because she knew a copy would be on her file, discarded her copy. She said the conduct of tearing up the memo was not inappropriate as it was her personal copy. It was hers to do as she wanted and it was torn up not before Mrs. Miles. She said that she did not hiss her teeth. She disagreed that the actions of tearing up the memo and hissing her teeth warranted immediate dismissal. She disagreed with the suggestion that the Company had no basis to give her a hearing before her dismissal. She agreed that the original hearing date of December 29, 2015 was rescheduled to facilitate her but she insisted that the rescheduled hearing date of January 6, 2016 still did not afford her ample time.
38. She agreed with the suggestion that the only role Mrs. Miles played in the disciplinary hearing was as a witness. She agreed that she had an opportunity to present her case at the hearing. She said she did not collect her last salary as she did not know about the cheque.



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39. In re-examination she said the charges laid against her were for first offences. She insisted Mrs. Miles did not object to her leaving early on December 10, 2015. She said that she had challenges finding a representative. She contacted more than ten lawyers and they were all on leave. She returned to Jamaica on January 5, 2016 and the hearing was on January 6, 2016.

THE AGGRIEVED WORKER'S CONTENTIONS:

- a) The Aggrieved Worker's employment was not temporary. The six months contract was a probationary period.
- b) The ground of termination was as a result of the hearing and not as a result of expiration of the contract.
- c) The right of appeal was not afforded to the Aggrieved Worker.
- d) The contract represents considerations of full employment and the associated benefit that change in status after a defined time. The Aggrieved Worker commenced accessing benefits which relates to permanent status of employment beyond the initial period of probation. The Aggrieved Worker transitioned from probationary status to permanent status.
- e) No rule of the Authority was breached by the Aggrieved Worker's disposal of her copy of the written warning.
- f) Evidence of early quitting rendered matter moot. Attendance record used at the disciplinary hearing and before the tribunal had a myriad of flaws and inconsistencies. In addition, the attendance record was never received by the Aggrieved Worker prior to the hearing.
- g) The Conduct of the hearing was not fair. She was not afforded time to secure a representative. The Chairman of the disciplinary panel and other members engaged in discussions prior to the disciplinary hearing. The Chairman was involved in drafting the charges. The hearing was a perversion of the Natural Justice.
- h) The Aggrieved Worker was not granted an appeal. She requested an appeal in two ways.

This was a breach of Section 22 (1) (a) of the Labour Relations Code to be afforded an appeal.



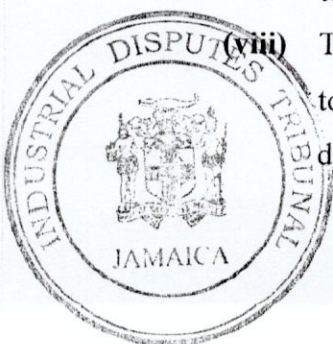
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- i) The Heads of Agreements between the Government of Jamaica and public sector workers updates the provisions of the Staff orders.
- j) The Tribunal should exercise its powers under Section 12(5) (c) (1) of the LRIDA and order that in addition to the payment of all earnings and emoluments to which would have been due to the Aggrieved Workers since her termination up to a point determined by the Tribunal and that she be reinstated without prejudice and/or malice.

THE TRIBUNAL'S FINDINGS & RESPONSE

The Tribunal in arriving at its findings took note of all the evidence both documentary and oral and concluded that:

- (i) The six months period set out in the employment letter of May 4, 2015 was not a probationary period.
- (ii) The Aggrieved Worker was employed on a temporary basis not a permanent one.
- (iii) The Aggrieved Worker was never appointed to a permanent position at the Company.
- (iv) Notwithstanding that the period of six months set out in the employment letter of May 4, 2015 was expired, the Aggrieved Worker's status as a temporary worker continue up and until her termination by way of letter dated January 7, 2016.
- (v) The letter of employment stated that her employment was "*for six months in the first instance*" which implied the possibility of further employment. The performance appraisal done by her supervisor Mrs Mile recommended confirmation of her appointment. Even though she was still classified as a temporary employee, the process had begun to transition her from temporary to permanent status.
- (vi) The Aggrieved Worker's supervisor had orally reprimanded her about her early quitting on occasions prior to December 14, 2015.
- (vii) The Aggrieved Worker did not have the permission of her immediate supervisor to leave early on December 10, 2015.
- (viii) The Aggrieved Worker was out of the sight of her immediate supervisor when she tore up the written reprimand. However, the hissing that accompanied the destruction of the reprimand was within the hearing of her supervisor. Her



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response to the receipt of the written reprimand showed great disrespect to her supervisor and was an act of insubordination.

- (ix) The Aggrieved Worker's early quitting for the period up to December 10, 2015 was disciplined by way of oral and written reprimands issued by her supervisor, Mrs. Miles.
- (x) The attendance record that was used at the disciplinary hearing was faulty. The attendance record noted the Aggrieved Worker as leaving early, on days that she left work after working hours had ended and several days that she worked were described as non-working days. These errors on the face of the attendance record, showed that the attendance record used at the disciplinary hearing was not reliable.
- (xi) There was no proper appeal of the termination. The Company's manual set out the procedure for how the appeal was to be done and the Aggrieved Worker did not follow the procedure. The procedure was for the employee to apply to the CEO for a reference to the Board of the Company. The Aggrieved Worker did not apply to the CEO for the reference to the Board. Her letter of termination did not state that she had the right of appeal and by when. This is an industrial relations best practice.
- (xii) Notwithstanding that the Aggrieved Worker was allowed a disciplinary hearing; the issues/charges put to her in writing; was told of her right to have a representative present and was given an opportunity for her case to be heard, the Tribunal finds that the procedure that the Company followed which culminated in the termination of the Aggrieved Worker's employment for was unfair for the reasons that follow.
 - (a) The Aggrieved Worker had already been sanctioned for early quitting by way of written reprimand dated December 14, 2015. It was unfair for the disciplinary committee to have considered a charge to which a disciplinary sanction had already been applied. In addition, the Company relied on a flawed attendance record. In the absence of new allegations of early quitting, the Aggrieved Worker had already been disciplined for this offence prior to



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the hearing held on January 2016. It should not have been the subject of fresh disciplinary proceedings.

- (b) The Company breached the rules of natural justice against bias and the right to a fair hearing. Firstly, the Senior Director of Human Resources had multiple roles in the process. She sought legal advice on behalf of the Company as to how to terminate the employment, she laid the charges against the Aggrieved Worker, she discussed the matter with the Chairman of the disciplinary Committee even before the charges were arrived at and she was also a member of the disciplinary committee. She proffered the charges, she acted as a judge by being a member of the disciplinary committee and as a juror in determining what charges the Aggrieved Worker was guilty of or not guilty of. Secondly the correspondence between the Company and its legal advisors show that it was always the intention of the Company to terminate the Aggrieved Worker's employment notwithstanding the disciplinary hearing that was afforded to her.
- (c) The convergence of the Company's disciplinary process with the decision not to renew the contract of a temporary worker, muddled the basis upon which the Aggrieved Worker's employment was being terminated.



AWARD

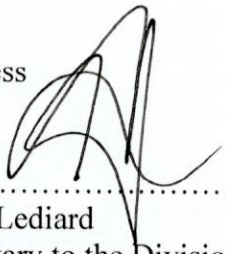
In accordance with Section 12 (5) (c) (iii) of the Labour Relations and Industrial Disputes (Act) the Tribunal orders that:-

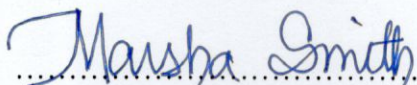
- (1) The Company reinstate MS. ALLISON SMALL effective January 7th, 2016 on or before May 18th, 2020 with basic wages for the period from March 1st, 2016 up to the May 18th, 2020 or up to the date which the Company reinstates Ms ALLISON SMALL whichever is earlier.
- (2) Failure to reinstate MS. ALLISON SMALL as stipulated above, the Company shall pay her as compensation an amount equivalent to 12 months' emoluments at current rates, in full and final settlement of her unjustifiable dismissal. The sum is not be discounted nor set off by the notice payment made to the Aggrieved Worker at her termination on January 7th, 2016.

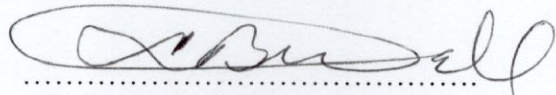
DATED THIS 28th, DAY OF APRIL 2020

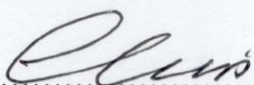


Witness


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Gary Lediard
Secretary to the Division


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Miss Marsha Smith
Chairman


.....
Mr. Leslie Hall, J.P.
Member


.....
Mr. Clinton Lewis
Member