

INDUSTRIAL DISPUTES TRIBUNAL
Dispute No.: IDT 14/2020

SETTLEMENT OF DISPUTE
BETWEEN
SIMPSON FINANCE JAMAICA LIMITED
AND
MR. CHRISTOPHER BERNARD

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD. JP	-	CHAIRMAN
MR. LESLIE HALL, JP	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

OCTOBER 19, 2021



INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**SIMPSON FINANCE JAMAICA LIMITED
(THE COMPANY)**

AND

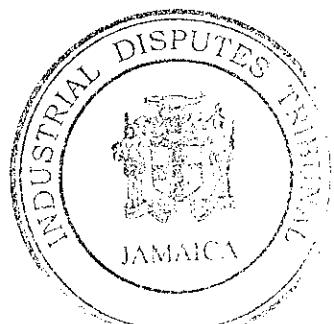
**MR. CHRISTOPHER BERNARD
(THE AGGRIEVED)**

REFERENCE:

By letter dated July 8, 2020, 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 as follows:

“To determine and settle the dispute between Simpson Finance Jamaica Limited on the one hand, and Mr. Christopher Bernard 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)
Mr. Clinton Lewis	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Mr. Christopher Dunkley	-	Attorney-at-Law
Mrs. Patricia Wright-Martin	-	Group Human Resources Manager

The **Aggrieved** was represented by:

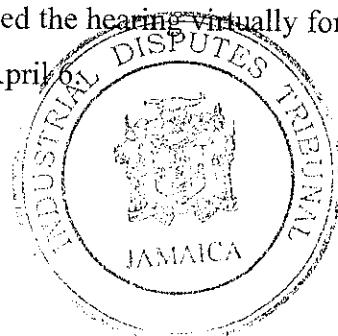
Senator Lambert Brown, CD	-	Industrial Relations Consultant
Mr. Clifton Grant	-	1st Vice President, University and Allied Workers Union
Ms. Delrose Holgate	-	Deputy General Secretary, University and Allied Workers Union

In attendance was:

Mr. Christopher Bernard	-	Aggrieved Worker
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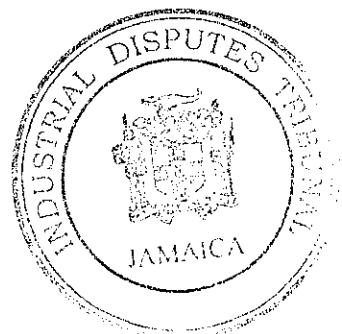
SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties and oral submissions made during fifteen (15) sittings held between November 26, 2020, and June 30, 2021. Mr. Dunkley joined the hearing virtually for sittings 5 and 6 on March 30, sitting 7 on April 1 and sitting 8 on April 6.



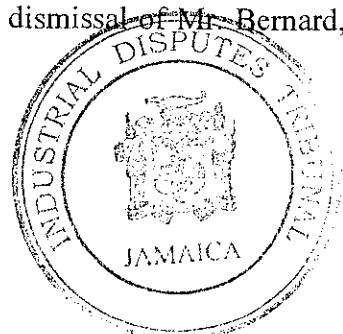
BACKGROUND TO DISPUTE:

1. Simpson Finance Jamaica Limited (The Company) is an in-house financing company for vehicles and industrial equipment sold by the Stewart's Automotive Group. The Company offers a convenient auto loan application process for the purchase of vehicles sold by the Group.
2. Mr. Christopher Bernard was employed to Simpson Finance Company Limited, first as a Junior Finance Officer and later promoted to the position of Finance Officer. On May 29, 2018, Mr. Bernard received a letter from the Company advising him that he was being suspended with pay, pending the outcome of investigations into matters relating to a customer's loan.
3. On June 4, 2018, Mr. Bernard received a letter from the Company inviting him to attend a disciplinary hearing on June 6, 2018, or June 7 or 8, 2018, to answer to seven disciplinary charges. The disciplinary hearing was eventually held on June 15, 2018.
4. On June 25, 2018, Mr. Bernard received a letter signed by the General Manager, Miss Fiona Fearon, in which the outcome of the disciplinary hearing was outlined and advising him that the Company had taken the decision to dismiss him effective June 25, 2018. Mr. Bernard appealed the decision to dismiss him, but his appeal was not successful.
5. Mr. Alexander Williams, Attorney-at-Law who Mr. Bernard had retained to represent him, wrote to the Ministry of Labour and Social Security seeking assistance to resolve the issue. The conciliation efforts at the Ministry failed to resolve the matter. 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. Mr. Bernard then engaged the services of Senator Lambert Brown, Industrial Relations Consultant to represent him at the hearing before the Industrial Disputes Tribunal.



CASE FOR THE COMPANY:

6. The Company's Attorney, Mr. Christopher Dunkley in his opening submission stated that Simpson Finance Jamaica Limited (Simpson Finance) was a subsidiary of the Stewart's Group of Companies and a part of a Caribbean conglomerate providing in-house finance to customers seeking to purchase new and used vehicles from the Stewart's Automotive Group. He further stated that Mr. Christopher Bernard was employed to Simpson Finance on July 8, 2014, as a Junior Finance Officer and that he was later promoted to the position of Finance Officer and served in this position up to the time of his termination on June 25, 2018.
7. Mr. Dunkley stated that there were on-going issues with the quality and preparedness of the applications which Mr. Bernard submitted for adjudication as well as other aspects of his work performance. As a result of a customer not making the payments on a loan, checks were made, and certain irregularities were discovered. The Company's Loss Prevention Supervisor recommended that a preliminary investigation be convened. There were factors surfacing that implicated Mr. Bernard and so he was suspended from duties with pay, pending the outcome of the investigation.
8. Following this investigation, charges were proffered against Mr. Bernard, and he was invited to a disciplinary hearing. The letter advising Mr. Bernard of the pending hearing was accompanied by witness statements, an investigation report and extracts from the Company's Employee Handbook. Up to the time of the hearing on June 15, 2018, Mr. Bernard declined to provide a statement in response to the allegations made against him.
9. The disciplinary hearing commenced and during cross examination of the first witness - Mr. Michael Robinson, Loss Prevention Supervisor, Mr. Bernard expressed concerns regarding the conduct of the hearing and subsequently, together with his Attorneys withdrew. However, the hearing of the matter continued, and the panel made its recommendations to the Company which resulted in the dismissal of Mr. Bernard, with effect from June 25, 2018.



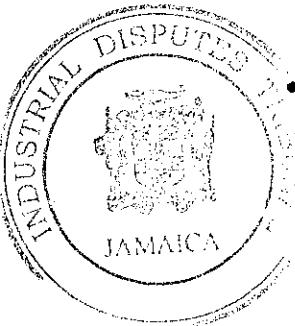
10. At the hearing before the Tribunal, the Company called two witnesses in support of its case: the first, Mrs. Patricia Wright-Martin, the Group Human Resources Manager of the Stewart's Group of Companies, and Miss Fiona Fearon, General Manager of Simpson Finance Jamaica Limited.

11. Mrs. Wright-Martin provided a witness statement which was admitted as Exhibit 1, and testified further as follows:

- A Preliminary investigation was conducted by Simpson Finance into matters pertaining to a customer. Out of this investigation concerns were raised on what appeared to be gross misconduct on the part of its employee, Finance Officer, Mr. Christopher Bernard.
- As head of the Group Human Resources Department, she had oversight of the investigation and also the proffering of charges against Mr. Christopher Bernard and thereafter was the co-ordinator of the disciplinary proceedings against Mr. Bernard.
- By letter dated May 29, 2018, the Company suspended Mr. Bernard from work, with full pay, pending the outcome of further investigation.
- On June 4, 2018, the Company received a letter from Alexander Williams and Company, Attorneys-at-Law representing Mr. Bernard, informing the Company that Mr. Bernard's suspension was illegal, and demanding the retraction of the letter and a written apology. Failing which the matter would be reported to the Ministry of Labour and Social Security and the Industrial Disputes Tribunal.
- From that point it became obvious to the Company that there would be no cooperation from Mr. Bernard and his representative in this matter.

12. Mrs. Wright-Martin further testified that:

- By letter of June 4, 2018, Mr. Bernard was invited to a disciplinary hearing, scheduled for one of three suggested dates - June 6, 7, or 8, 2018. The date June 8, 2018 was initially chosen, but was set aside to allow discussions between the parties. A new date of June 15, 2018 was agreed.
- The letter of June 4, 2018, had outlined the seven charges which Mr. Bernard was expected to answer to at the disciplinary hearing. The charges were;

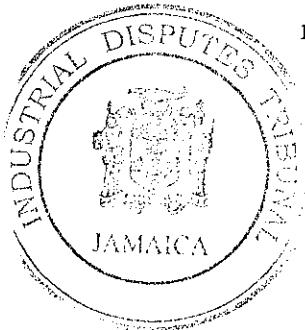


- (i) Violation of Company rules
- (ii) Deliberate falsification of documents or information for personal gain.
- (iii) Dishonesty
- (iv) Fraud
- (v) Acting outside the scope of authority resulting in damage or loss to the Company
- (vi) Acting outside the scope of authority resulting in reputational damage to the Company and
- (vii) Habitual and repetitive lateness in a month or quarter.

- The charges were in keeping with the provisions of Section 13 of Simpson Finance Employee Handbook.
- Attached to the letter of June 4, 2018, were the documents to assist Mr. Bernard in his defence. These were statements from Mr. Michael Robinson, the Investigator, Jannielle Witter, Finance Officer, the Company's Investigation Report and extracts from the Company's Employee Handbook.
- The letter also outlined the roles to be played in the hearing by Mrs. Wright-Martin, Mr. Kent LaCroix, Mr. Ian Mudie and Ms. Nathalie Lindo.

13. Mrs. Wright-Martin in her continuing testimony stated that:

- At the disciplinary hearing she was there to ensure that the policies and procedures were in line with the Labour Relations Code and in keeping with the International Labour Organization Standards. Her function was to coordinate the process and to lay out the charges against Mr. Bernard.
- Mr. Bernard had not offered a written comment on the issues presented against him.
- She categorically denied that she was the Chairman of the Disciplinary Hearing and made it clear that there were two erroneous references which led to the misconception that she was the Chairman of the hearing.



- She reemphasized that both the Minutes of the hearing and the findings, opinions and recommendation pointed to Mr. Kent LaCroix as the Chairman of the disciplinary hearing.
- In order to ensure the smooth operations of the hearing and to prevent the hijacking and frustration of the process by the employee's representatives, as had occurred in previous hearings, the Company sought to have an Agenda agreed between both parties, in keeping with Section 22(vi) of the Labour Relations Code. This Agenda was communicated to Mr. Bernard and his representatives to ensure fairness. Although it was not signed by Mr. Bernard and his representative, she felt that there was some agreement since the hearing was allowed to proceed.

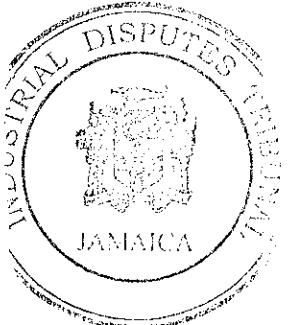
14. The Company's Attorney in continuing examination in chief asked Mrs. Wright-Martin the following question;

Q: So, the emphasis was on fairness

A: Yes, the representative is there mainly to ensure that the process is fair and that his client and the employee is not taken advantage or is treated unfairly in the process.

15. Mrs. Wright-Martin continued her testimony:

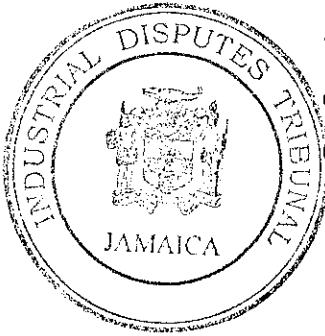
- The disciplinary hearing began on June 15, 2018, at 2:00 p.m. Prior to the commencement, the Attorneys representing Mr. Bernard, were provided with a witness statement from Miss Fiona Fearon, together with confidential loan documents relating to two clients. They were also provided with a confidentiality agreement to protect the private information of the Company's clients, which they read but refused to sign.
- The charges were as follows:
 - i. Violation of Company Rules
 - ii. Deliberate falsification of documents for information for personal gain
 - iii. Dishonesty
 - iv. Fraud



- v. Acting outside the scope of authority resulting in damage or loss to the Company
- vi. Acting outside the scope of authority resulting in reputational damage to the Company
- vii. Habitual and repetitive lateness in a month or quarter
- A short time into the disciplinary hearing, Mr. Bernard's representative sought to question the first witness, Mr. Michael Robinson. This was contrary to the agenda format previously discussed. After exchanges and objections from the Company, Mr. Bernard and his representative withdrew from the hearing, despite being cautioned by the Company's Attorney. The hearing then continued in their absence.
- At the end of the hearing, the panel directed that Mr. Bernard should be written to and given a further opportunity to respond in writing to the charges against him. The reason for this, it was stated was on account of Mr. Bernard's departure from the disciplinary hearing. Additionally, the panel considered it important that the Company obtain a statement from him before the completion of the deliberations, prior to submission of a report. This letter was sent to Mr. Bernard on June 21, 2018.
- Mr. Bernard did not respond and consequently, the disciplinary panel presented its findings, opinions, and recommendation to the Company.
- She had no part in the deliberations connected to the report.

16. Mrs. Wright-Martin continued her testimony:

- By letter dated June 25, 2018, signed by Miss Fiona Fearon, General Manager, under the caption **Re - Outcome of Disciplinary Hearing held on Friday, June 15, 2018 & Company's Decision**, Mr. Christopher Bernard was dismissed with immediate effect. He was advised of his right to appeal.
- On June 29, 2018, by letter to Mrs. Donna Cumberbatch, Simpson Finance's Chief Executive Officer, resident in Barbados, Mr. Bernard appealed the process of the termination of his employment. By letter dated July 3, 2018, Mrs. Cumberbatch replied advising him that his letter was being returned to Jamaica

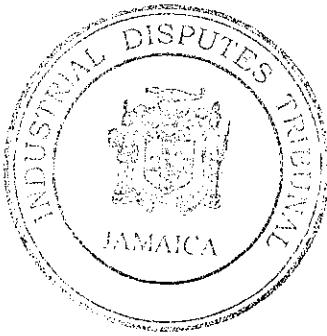


for attention and would be treated as his appeal against his dismissal. She advised him that he would be contacted by Simpson Jamaica regarding details of the appeals process.

- On July 10, 2018, she had written to Mr. Bernard requesting him to advise if his letter of June 29, 2018, addressed to Mrs. Cumberbatch was his final submission or whether he wished to submit additional material with respect to his appeal. If so, he should have done so before the end of business on Thursday, July 12, 2018. He was also advised that he would be informed in writing of the outcome of his appeal within two business days after the completion of the appeals panel consideration.
- By letter dated July 20, 2018, she had written to Mr. Bernard, advising him that the Appeals Panel had upheld the decision of the disciplinary hearing to terminate his employment.

17. The Company then called Miss Fiona Fearon, the General Manager of Simpson Finance Jamaica Ltd. Miss Fearon testified as follows:

- The Assistant General Manager, Ms. Cadeen Clarke had brought to her attention irregularities in the file of one of its customers. The job letter on this customer's file was similar to one submitted by Mr. Bernard for another customer whose application was declined. The Company sought to ascertain whether the bank statement on the said file was legitimate. It was eventually proven to be fraudulent.
- As a result of these irregularities the Company conducted an investigative review of loan applications. Other irregularities were discovered. On May 29, 2018, during an interview, the Company's Loss Prevention Supervisor also discovered the offer of a bribe on Mr. Bernard's cell phone.
- She also stated that Mr. Bernard had altered the residual percentages for loan repayments in respect of three customers. He had no authority to make those changes.



- A number of completed customer loan applications prepared by Mr. Bernard were not submitted for adjudication. This action was in violation of the Company's established standards and exposed the Company to risk and revenue leakage.

Under cross examination Miss Fearon testified:

"Christopher presented applications and they were questionable, they didn't match, they were not prudent, what he was saying in the report and what was there and I had to do some call-backs with some clients and we found that they are untrue. And we had to write to Christopher, we have documents where we have written to Christopher about inconsistencies and negligence in terms of duties".

By letter dated November 9, 2017, he was written to regarding "***Your continued poor work performance***"

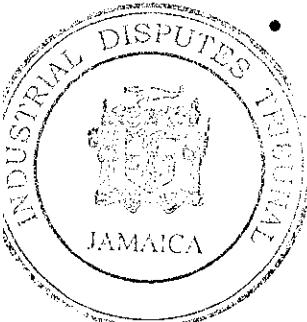
Miss Fearon continued:

- Finance officers were not paid on every application as was stated previously, but on every application that was approved for payment.
- She admitted that at the disciplinary hearing she had stated that over a one-year period fifty-seven per cent (57%) of Mr. Bernard's loans had resulted in repossession. However, she was unable to state the actual number of repossession, off hand.
- On the issue of his habitual lateness, she said that Mr. Bernard had been written to by the previous General Manager and that she herself had held many discussions with him in this regard.

CLOSING SUBMISSIONS ON BEHALF OF THE COMPANY:

18. Mr. Dunkley, Attorney-at-Law representing the Company contended as follows:

- He rejected the assertion of the representative for the Aggrieved that the Company had failed miserably in meeting the burden of proof.
- The investigation report was not an issue at the disciplinary hearing. It was acknowledged that the name of the investigator was not noted on the report, but



that there was a signature at the bottom of the report, and it was not an unattributed report

- The Labour Relations Code “*... speaks to the parties being encouraged to meet and to agree the modalities of the disciplinary proceedings*”.
- The Attorneys had met, and a document was given to Mr. Bernard’s Attorney. The document had addressed the Company’s request that the representative of the Aggrieved should be there to ensure fairness and the assurance of natural justice.
- The disciplinary process was not arbitrary as Mr. Bernard was invited to make enquires and inspect documents and to bring a representative to the hearing.
- At the hearing on June 15, 2018, an agenda was provided outlining the course of the proceeding which had stated *inter alia* that Mr. Bernard would have been allowed to ask questions and that his representative would have been permitted to observe the proceedings.
- Mr. Bernard’s representative would have had no right to participate but could have sought leave of the panel to ask questions for the purpose of clarity.
- There was no dispute as to the role of Mrs. Wright-Martin. She had marshalled the evidence, advanced charges and had questioned witnesses. At no time had she stated that she was the Chairman or was acting as the Chairman.
- Mrs. Wright-Martin had played no role as a member of the panel hearing the matter. Her role was convening, prosecutive and was not that of adjudicator.
- Notwithstanding Mr. Bernard’s withdrawal, a proper hearing had continued after his departure. The panel had completed its deliberations and had presented the findings, opinions, and recommendation.
- After the disciplinary hearing the Company had afforded Mr. Bernard a further opportunity to respond in writing to the allegations.
- Mr. Bernard appealed the findings of the disciplinary panel. The appeals panel comprised no one that was previously involved in the hearing of the matter. This panel had reviewed Mr. Bernard’s appeal and upheld the findings of the disciplinary hearing.

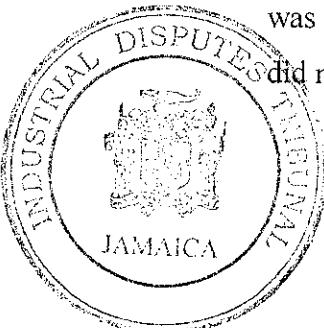
- The Company was in compliance with Section 22 of the Labour Relations Code - Part VI - Grievance, Dispute and Disciplinary Procedures, and further, “*The*

Company's responsibility was to conduct fair proceedings that meet with the conformity of the Labour Relations Code and that the decision to terminate the aggrieved was substantively in keeping with the code".

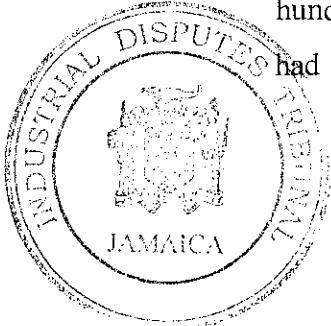
- The Company upheld its decision to terminate the employment of Mr. Bernard and implored the Industrial Disputes Tribunal to do likewise.

CASE FOR THE AGGRIEVED:

19. Senator Lambert Brown, Industrial Relations Consultant representing Mr. Bernard, in his opening submission stated inter alia that Mr. Bernard was recruited and employed by Simpson Finance Company Limited in July 2014. The Company had recognized Mr. Bernard as a top producer, but that his dismissal had extinguished "*his brief shining future as a salesman in the financial sector*"
20. He submitted that the procedures of the disciplinary hearing which had resulted in Mr. Bernard's dismissal were fatally flawed and unfair and that he would demonstrate that both the procedures and the grounds of dismissal did not justify dismissal.
21. Senator Brown requested that the Tribunal in determining fairness and justifiability should also take into account the provisions of the Labour Relations Code and the Rules of Natural Justice which he said were applicable to matters heard by the Tribunal. Senator Brown further stated "*..... Mr. Bernard submits that Simpson Finance Company failed to meet the burden of proof...*" thus making his dismissal unjustified.
22. He then called Mr. Christopher Bernard to testify on his own behalf. Mr. Bernard testified as follows:
 - He was 27 years old and was employed to Simpson Finance in July 2014. Prior to being recruited he was a loan officer employed to Scotia Bank Jamaica Limited. He was offered the position of Finance Officer; but based on his age and experience he did not qualify for appointment at that level, so a junior position was created.



- His main job function was to conduct due diligence in the collection of the necessary documents, prepare loan applications and submit to the Manager for approval. Following the Manager's approval, the file would be sent to the contract administrator for uploading of the information to the computer system.
- He was never written to by the Company regarding manipulation of the residual percentage (balloon payments) in 2015 or 2016, as the balloon system could not be manipulated. He did not alter the balloon system nor make any false input.
- He admitted that he was written to by Miss Lakishma Thomas, the then General Manager and Mrs. Patricia Wright-Martin regarding his performance and not misconduct. He stated that the matters were dealt with and that no action had been taken against him arising from those letters.
- He earned salary of Three Million Dollars per annum and had received a commission. This incentive was paid based on the number of loans disbursed or booked over a period of time.
- On May 29, 2018, after work hours, he was called to an interview by Mr. Michael Robinson, Head of Security for the Company, who also handed him a letter advising him that he was suspended from work. The interview was taped but he had not received a copy of the recording.
- He had held no conversation with Miss Fearon regarding fraudulent documents.
- During the period April 1, 2016, to February 2018, he stated that he had in the region of 325 loans approved. The Company had gone through his records and had identified three (3) irregularities.
- The Company had never written to him regarding high levels of re-possessions. If the level of repossessions mentioned by Miss Fearon at the hearing were correct, he would have been fired.
- During the interview with Mr. Robinson on May 29, 2018, Mr. Robinson had taken his phone and had gone through his emails and had seen a message, which he, Mr. Bernard had not seen or opened. This message was from a customer saying "... a hundred thousand to deal with the thing". It turned out to be from a customer who had presented a fraudulent bank statement, which he (Mr. Bernard) had already



reported to Miss Fearon. He had heard nothing more in this regard until the disciplinary hearing.

- He had attended a disciplinary hearing on June 15, 2018, and was represented by his Attorneys, Mr. Alexander Williams and Miss Topazia Brown, a junior assistant.
- Mr. Williams did not agree with the written Agenda presented by the Company and had attempted to question the witness, Mr. Michael Robinson, but he was not granted leave to do so. He nevertheless displayed a calm demeanour.
- Mr. Williams had wanted to question the witness, but the panel hearing the matter which comprised Messrs Kent LaCroix and Ian Mudie and Mrs. Wright-Martin had objected. The panel had then exited the hearing room to obtain legal advice from the Company's Attorney, Mr. Christopher Dunkley, who had also exited with them.
- On the panel's return to the hearing room, Mrs. Wright-Martin advised him and his Attorney that the policy of Simpson Finance was that once a witness had given a statement, questions should come directly from the employee and not from the representative. He would be allowed to ask questions and Mr. Williams would be allowed to ask a few questions subject to the approval of the panel.
- He had left the disciplinary hearing before Miss Fearon testified.
- Prior to the disciplinary hearing, he had received correspondence that the hearing would have been chaired by Mrs. Patricia Wright-Martin, with the other members of the panel being Messrs. LaCroix and Mudie. At the hearing Mrs. Wright-Martin had welcomed everyone and went through the charges based on the letter of June 4, 2018.
- He was of the opinion that Mrs. Wright-Martin was the Chairman of the hearing and the Minutes of the meeting had recorded her as being the chairman. He had received nothing from the Company to indicate that the information in the Minutes was a mistake. In addition, Miss Natalie Lindo, the note taker for the disciplinary hearing, had certified that the document headed **Minutes From Disciplinary Hearing In Relation to Christopher Bernard, Finance Officer** were the true Minutes of the meeting.
- On June 15, 2018, just before the hearing had begun, he was handed a statement submitted by Miss Fearon which he had given to his representative. The statement stated that she had discovered a list of files that were not submitted. He was not

given a list of those files. If this had been done, he would have been able to explain the reasons for any delays. He had received no dossiers in relation to customers. Mrs. Wright-Martin had written to him subsequent to the meeting admitting that no dossier had been presented to him.

- He had provided explanations for his lateness on 20 occasions during a six-month period when road repairs were being done on Marcus Garvey Drive - a route he travelled on his way to work. Both Miss Lakishma Thomas, the Manager at that time, and Miss Cadeen Clarke, Assistant General Manager were aware of this. His duties had also required him to attend car shows outside of the office location which caused him to be absent from the office. Miss Fearon had never written to him about lateness or discussed this matter with him.
- He had only received the notes of the disciplinary hearing on July 4, 2018, although the Company's brief showed that he was entitled to have received them prior to that date. He had never been given the findings and recommendations prior to his appeal hearing. He had only seen the findings in the Company's brief at the Industrial Disputes Tribunal.
- He was never told when the review panel would have been sitting; neither was he aware of the names of the members of the panel. He later became aware that the panel comprised the mother and sister of the person who had written the letter suspending him. He had received a letter outlining the outcome of the appeal.
- His dismissal for fraud and dishonesty had negatively impacted his ability to obtain employment in the financial sector.

23. During cross examination Mr. Bernard testified as follows:

- He was suspended with pay with effect from May 29, 2018. He was advised that this was based on a report of his alleged involvement in presenting fraudulent documents for a loan application.
- He was not asked by Human Resource to provide a statement but was asked to prepare himself for the hearing on June 15, 2018. He did not agree that he had not provided a statement, as one had been given and was recorded by Mr. Robinson, the Loss Prevention Supervisor.

- Mr. Alexander Williams, Attorney-at-Law had written a letter to the Company on his behalf stating, *inter alia*, that he had found no provision in the Company's handbook to suspend Mr. Bernard and that the letter to Mr. Bernard was not only defamatory but could have been regarded as a constructive dismissal. The suspension was not only unauthorized but was illegal and infringed upon basic natural justice.
- He had received the correspondence of June 4, 2018, regarding the "... *incident that led to the charges*" which stated in part that if he wished to view the supporting documentation in relation to the charges, he should have contacted Miss Fearon, General Manager.
- He had not provided a response to the Company as he was instructed by Mr. Robinson, the Head of Security that it was he (Mr. Robinson) who would have been requesting him to come into the office, since he was barred from the compound. "... *So there was no way he could make contact with anyone other than Mr. Robinson at the time.*"
- He had obtained documents, but his Attorney had advised that he would need to see other supporting documents before he could respond to anything that was stated by Mr. Robinson. He had not contacted Miss Fearon regarding the invitation to view the supporting documents relating to the charges.
- The Minutes as reproduced up to the point of his departure from the hearing on June 15, 2018, were accurate. It was his view that Mrs. Wright-Martin was a part of the panel hearing the matter.
- He had given instructions to his Attorney to participate in the hearing on the basis that he was told he would have received other documents and had tried to contact Miss Fearon through Mr. Robinson.
- He had also accepted the Company's invitation to retrieve information from the Company's laptop computer which had been assigned to him. He had attended the Office and had requested the computer from Mr. Robinson. After entering the password, he was not given access to clarify anything of which he had been accused.

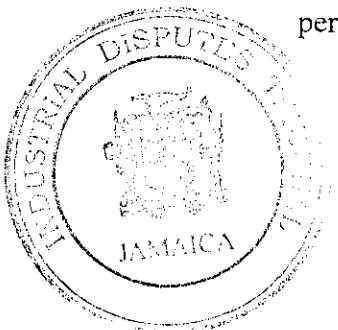
Given the information made available to him, he had co-operated as much as he could.



- In response to the question as to whether he had considered the proceedings against him to be unauthorised and unlawful, he had stated that he was being requested to speak on things about which he knew nothing.
- He remembered that on several occasions he had requested the documents from Mr. Robinson but had not received them. He maintained that he was not allowed to enter the Company's compound and that his only contact was with Mr. Robinson.
- In response to the statements made by the cross examiner to the effect that his lawyer had had the opportunity and was invited to review the documentation, and that he was never barred from the compound, he testified that his lawyer had no reason to be on the compound unless he had instructed him to do so. He (Bernard) was barred from the compound and therefore was not able to provide his lawyer with any information.
- After the postponement of the hearing of June 8, 2018, he was advised that he would have been able to view the document on the new date of the hearing which was set for June 15, 2018. He conceded that documents were disclosed in the course of the disciplinary hearing but that the only documents presented to his attorney were the witness statements that he had received on the said date.
- In response to the suggestion that the Company had waived the request for the confidentiality agreement to be signed and had agreed to proceed with the hearing, he responded that as far as he was aware what had been communicated to his lawyer was that he would have seen the documents at the hearing.

24. During re-examination Mr. Bernard said that he had responded to the letter dated June 21, 2018, from Mrs. Wright-Martin, in which the disciplinary panel had given him a further opportunity to respond in writing to the allegations.

- The Company's representatives - Mrs. Wright-Martin and the panellists all asked questions. Neither he nor his Attorney was allowed to ask questions.
- On the day of his suspension, he was escorted from the compound by security personnel.



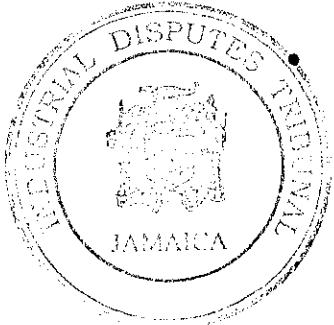
CLOSING SUBMISSION ON BEHALF OF THE AGGRIEVED:

25. Senator Brown, Industrial Relations Consultant, Mr. Bernard's representative, submitted as follows:

- Mrs. Patricia Wright-Martin had admitted under cross examination that the charges as set out in the findings, opinions and recommendation of the panel hearing the matter, were documents connected to the loan for a client.
- The Company had acted unfairly in Mr. Bernard's termination and that the submission was based on the unfairness of the procedure adopted by Simpson Finance in respect of the disciplinary hearing and the appeals process.
- The Company had violated Section 3(4) of the Labour Relations and Industrial Disputes Act which required that where matters were brought to the Industrial Disputes Tribunal regard should be given to the provisions of the Labour Relations Code.
- The disciplinary hearing was unfair, as based on the evidence, Mr. Alexander Williams, Attorney-at-law representing Mr. Bernard was "... *not allowed to advise him as to what questions to ask*", and that he, Mr. Williams had sought leave of the disciplinary panel to allow him to ask questions, but was denied, while the Attorney for the Company was allowed to ask questions of the witnesses.
- Mrs. Wright-Martin, the Head of Human Resources had played multiple roles.
- Miss Fearon had made untruthful and damaging allegations against Mr. Bernard at the hearing and had stated that she had participated in the deliberations on the findings of the disciplinary panel.

Senator Brown further submitted that:

- The Company's witnesses lacked credibility and their evidence should be rejected.
- Miss Fiona Fearon, General Manager who was a witness at the disciplinary hearing had also played an active part in the appeals process.
- Mr. Bernard was given three days after his dismissal to file an appeal. However, he was not provided with the findings, opinions and recommendation of the



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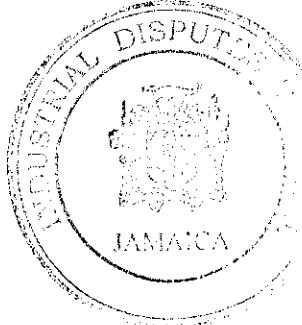
disciplinary panel. He had only received the Minutes of the disciplinary hearing one day before the deadline for his appeal.

- The review panel which considered the appeal had access to Mr. Bernard's personal file which contained matters dating back to 2017.
- The appeals process was fatally flawed and unfair.
- That "... *the ineluctable conclusion has to be that the dismissal of Mr. Bernard was unfair, was unjust and you should so find, is our prayers to the Tribunal ...*".
- He asked that the Tribunal find Mr. Bernard's dismissal to be unjustified; and as compensation, Mr. Bernard should be paid seven years' emoluments, at basic salary and in addition the potential commission which he would have earned.

TRIBUNAL'S CONSIDERATIONS:

Sequence of Events

26. The Tribunal carefully considered the circumstances leading up to the dispute and the evidence presented orally and in the Exhibits, admitted; then noted the following sequence of events.
27. By letter dated May 29, 2018, Mr. Bernard was suspended with pay pending further investigations into a report of his alleged involvement in the presentation of fraudulent documents relating to a loan application made by a client.
28. By letter dated June 4, 2015, Mr. Bernard was invited to attend a disciplinary hearing on either June 6, 7 or 8, 2018, each day commencing at 10:00 a.m. or 2:15 p.m. The hearing was eventually held on June 15. The letter outlined the following charges:
 - i) Violation of Company Rules
 - ii) Deliberate falsification of documents or information for personal gain
 - iii) Dishonesty
 - iv) Fraud
 - v) Acting outside the scope of authority, resulting in damage or loss to the Company



- vi) Acting outside the scope of authority resulting in reputational damage to the Company
- vii) Habitual and repetitive lateness in a month or quarter

29. The disciplinary panel that heard the charges found as follows:

“Charge of dishonesty - Guilty

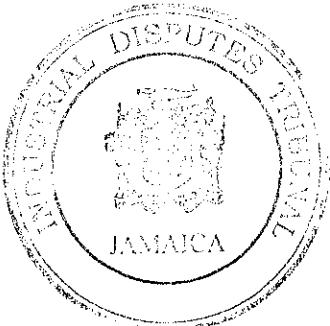
Mr. Bernard stated that he had given a client's file to another Simpson Finance loan officer, Jannielle Witter but evidence presented denies this and there is also no evidence in rebuttal.

Charges of Fraud – Guilty & Deliberate falsification of documentation for personal gains - Guilty

The evidence of [witness] is that Mr. Bernard deliberately manipulated the Company's loan calculator by adjusting the residual percentage for three clients. The panel believes this was done deliberately to push through loans in order to gain more commission. There is also no evidence in rebuttal.

**Charge of violation of Company rules – Guilty &
Acting outside of the scope of Authority resulting in damage or loss to the Company
– Not guilty**

- (i) Adjusting the monthly payment of his own loan – The Panel has found insufficient basis for holding Mr. Bernard culpable of this charge because management was aware of this infraction and dealt with the situation when it first occurred in 2015
- (ii) Non-reporting of Bribery - The panel reviewed the Company's handbook and concluded that there were clear rules relating to the reporting of bribery; as outlined in Article 14, Point 7 which states: “The prevention, detection and reporting of bribery and other forms of corruption are the responsibility of all those working for, or on behalf of the Company or under its control.”



Charge of Acting outside of the scope of Authority resulting in reputational damage to the Company - Guilty

Withholding loan applications – Mr. Bernard had several loan applications for over the last two months that were not submitted for adjudication. There is also no evidence in rebuttal.

Habitual Lateness – Guilty

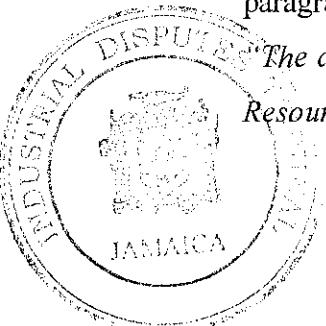
The Company's Time and Attendance Register establishes that Mr. Bernard was late twelve (12) times over the period January to March 2018.”

30. The disciplinary hearing panel found that six of the seven charges against Mr. Bernard were properly made out.
31. By letter dated June 25, 2018, signed by the General Manager, Miss Fiona Fearon, Mr. Bernard was dismissed with immediate effect.
32. On June 29, 2018, Mr. Bernard appealed the decision to terminate his employment. The review panel examined the case and upheld the recommendations of the disciplinary hearing panel.

TRIBUNAL'S DELIBERATIONS AND FINDINGS:

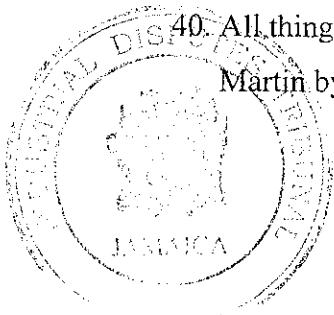
33. The Tribunal in its deliberations gave special consideration to the points made below.
34. The Tribunal noted that Mrs. Patricia Wright-Martin, Group Human Resources Manager testified that she had oversight of the investigation of the allegations against Mr. Bernard and also played an active role in the hearing of the charges proffered against him.
35. The letter of June 4, 2018, inviting Mr. Bernard to the hearing states in the penultimate paragraph:

The disciplinary hearing will be chaired by Ms. Patricia Wright-Martin, Group Human Resources Manager. The members of the panel are Mr. Kent LaCroix, Special Projects



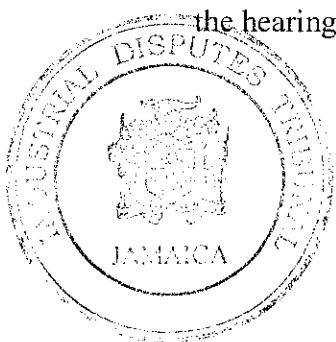
Manager and Mr. Ian Mudie, Division Accountant. Miss Natalie Lindo, Human Resources Officer will be the Note Taker”

36. Also, the Minutes of the disciplinary hearing held on June 15, 2018, recorded Mrs. Wright-Martin as the Chairman, Messrs LaCroix and Mudie as the panellists and Miss Natalie Lindo as the note taker. Miss Lindo in her capacity as note taker certified that the Minutes of the disciplinary hearing were a true reflection of what had transpired.
37. The Tribunal heard Mrs. Wright-Martin’s oral testimony that she was not the Chairman and had only performed the duties of convenor and coordinated the process. She said that Mr. Kent LaCroix was the Chairman and admitted that the reference to her as Chairman was erroneous but had not sought to correct those errors, which she could have done at the commencement of the disciplinary hearing. This was not done. If the reference to her as Chairman was in fact an error, the Tribunal was at a loss to understand why no corrections were made to the Minutes. The Tribunal also noted that the Company did not call a witness to give evidence that Mrs. Wright-Martin was not the Chairman of the disciplinary panel.
38. Members of the Tribunal noted that Mrs. Wright-Martin had multiple roles in the disciplinary hearing as documented in the Minutes. It was recorded that she also left the hearing in the company of Mr. Christopher Dunkley, the Company’s Attorney, and Messrs. Kent LaCroix and Ian Mudie, panellists, to participate in discussions. This implied that her role was substantively more than that of a convenor/coordinator.
39. The Tribunal also noted that the paper of June 25, 2018, titled “Findings, opinions and recommendation” bore the signatures of Messrs. LaCroix and Mudie and clearly identified each as a “panellist”. There was no indication in this paper that Mr. LaCroix was the Chairman of the panel.
40. All things considered, Members after review of the evidence concluded that Mrs. Wright-Martin by virtue of the nature of her involvement in the process was the Chairman of the



disciplinary hearing - the position to which she was named in two of the Exhibits admitted into evidence.

41. The evidence presented also showed that she played other roles in the disciplinary process, such as her involvement in overseeing the investigations that had led to the charges, and the reported marshalling of the evidence during the disciplinary hearing.
42. Members in their continued deliberation considered the ruling made at the disciplinary hearing that in accordance with the Company's Policy once a witness had given a statement, questions could only be asked by the person charged and not by his/her representative. The representative(s) would only be allowed to ask a few questions if approval was granted by the panel. This would be contrary to the rules of natural justice.
43. Members were of the opinion that the opportunity for Mr. Bernard to present his case was stymied by the fact that his representative could only ask questions on condition that he had received approval to do so and were cognisant of the fact that there were no such restrictions on the Company's representative.
44. Members noted from the evidence that at the conclusion of the hearing on June 15, 2021, the disciplinary hearing panel had directed that Mr. Bernard be written to requesting him to provide a statement in writing in response to the charges proffered. The letter to Mr. Bernard was dated June 21, 2021, and he was required to reply by 2:00 p.m. on June 22, 2021 - the following day. In the opinion of the Members, this did not allow sufficient time for a proper response.
45. The Tribunal did not overlook the evidence presented that there was an 'Agenda' prepared by the Company to guide the hearing but noted that there was no evidence that this Agenda was agreed to and signed by Mr. Bernard and/or his representative. It was also noted that Mrs. Wright-Martin stated that the 'Agenda' was read at the beginning of the hearing. However, the Minutes of the hearing did not reflect this as being the case.



46. Members were of the view that the charges proffered against Mr. Bernard were vague. The letter of June 4, 2015, which had conveyed the charges had advised Mr. Bernard that these charges had arisen out of an incident where he had presented fraudulent documents in relation to a loan application made by a Simpson Finance client. In this regard the Tribunal paid keen attention to the exchange between Senator Brown and Mrs. Wright-Martin, during cross examination:

"Q Let me go over it again, I want it to be clear, none of the charges relate to the documents connected to the loan of [Client 1] constituted on the ground for Mr. Bernard being found guilty by the panel?

A Correct

Q Good. Similarly, in respect to [Client 2]

A Well, under the charge of dishonesty there is a reference to [Client 2]

Q So let me be precise, none of the charges on which Mr. Bernard have been found guilty by the panel related to any document connected to the loan?

A Correct, the document,

Q Connected to the loan?

A Correct"

47. Members also noted that Miss Fearon in her testimony to the Tribunal, when questioned in cross examination could not verify that statements made by her to the disciplinary hearing panel were factual. Members were of the view that some of the information provided by her was incomplete and could have been detrimental to Mr. Bernard's case.

48. Miss Fearon in response to questions from the Tribunal admitted that she had participated in the deliberation of the findings and recommendation of the disciplinary panel. She responded as follows to questions asked by a member of the Tribunal.

"Q You said that management deliberated on the findings?

Yes

And were you a part of this deliberation?

A The opinions were given to us, yes, and we took their recommendation.

Q Were you a part of the deliberation?

A The deliberation, I would say yes, based on the findings that presented, yes, in terms of the recommendation."

49. With respect to the appeal, the report of the review panel did not state the date or the location where the review had taken place. Neither had the panel given Mr. Bernard a chance to be heard or to respond to the findings on each charge, bearing in mind that he was not present for the greater part of the disciplinary hearing.

50. In light of the evidence heard, found it difficult to understand the basis on which the disciplinary panel hearing the matter had arrived at the decision to find Mr. Bernard guilty on the charges.

51. In concluding, the Tribunal gave further consideration to the conduct of the disciplinary hearing, Members confirmed their earlier opinion that Mrs. Wright-Martin who had testified that she had oversight of the investigation had chaired the disciplinary hearing.

52. Miss Fiona Fearon who as a witness gave evidence on behalf of the Company, admitted to being a member of the management staff that had deliberated over the findings, opinions and recommendation of the hearing panel that had decided to impose the penalty of dismissal.

53. Restrictions were placed on Mr. Alexander Williams, the Attorney representing Mr. Bernard with respect to his questioning of witnesses.

54. Members agreed that the review panel had not allowed Mr. Bernard adequate time and opportunity to present his case.

55. It is for these reasons and guided by the Rules of Natural Justice that the Tribunal finds that the disciplinary process engaged in by Simpson Finance Company Limited against

Mr. Christopher Bernard was flawed and unfair thereby rendering the termination of his services unjustifiable.

AWARD:

56. In accordance with Section 12(5)(c)(ii) of the Labour Relations and Industrial Disputes Act, the Tribunal orders that Mr. Bernard be paid compensation for his unjustified dismissal in the amount of Five Million, Two Hundred Thousand Dollars (\$5,200,000).

DATED THIS 19th DAY OF OCTOBER 2021.



Mr. Charles Jones, C.D. J.P.
Chairman

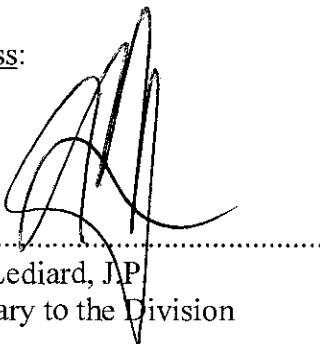


Mr. Leslie Hall, J.P.
Member



Mr. Clinton Lewis
Member

Witness:



Gary Lediard, J.P.
Secretary to the Division

