

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 23/2023

SETTLEMENT OF DISPUTE

BETWEEN

SUTHERLAND GLOBAL SERVICES JAMAICA PLC LIMITED

AND

SUAN SMITH

AND THE

AWARD

I.D.T. DIVISION

MR. BINDLEY SANGSTER, O.D. - CHAIRMAN

MRS. JACQUELINE IRONS, J.P. - MEMBER

MR. PAUL HINES - MEMBER

DECEMBER 5, 2025

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**SUTHERLAND GLOBAL SERVICES JAMAICA PLC LIMITED
(THE COMPANY)**

AND

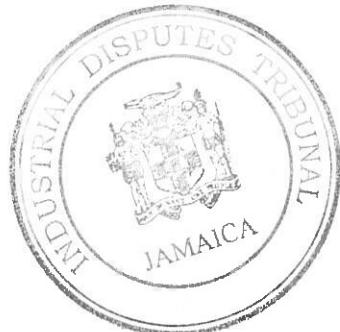
**SUAN SMITH
(THE DISMISSED WORKER)**

REFERENCE:

By letter dated August 28, 2023, the Honourable Minister of Labour and Social Security pursuant to 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, 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 Sutherland Global Services Jamaica PLC Limited on the one hand, and Suan Smith on the other hand, over the termination of her employment.”



DIVISION:

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

Mr. Bindley Sangster	-	Chairman
Mrs. Jacqueline Irons, J.P.	-	Member, Section 8(2) (c) (ii)
Mr. Paul Hines	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The Company was represented by:

Mr. Kwame Gordon	-	Attorney-at-Law
Ms. Simone McLean	-	Human Resources Manager



The Dismissed Worker was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
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In attendance was:

Ms. Suan Smith	-	Dismissed worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during seventeen (17) sittings held between November 15, 2023 and May 6, 2025.

The Panel that was initially selected to hear and settle the dispute consisted of Mrs. Sharon Anderson, Chairman, Mrs. Jacqueline Irons, Member and Mr. Paul Hines, Member. In December 2024, Mrs. Sharon Anderson demitted office and as such Mr. Bindley Sangster, Chairman was selected to fill the vacancy. The parties were written to in accordance with the provisions of Section 8 (4) of the Labour Relations and Industrial Disputes Act (LRIDA) which states:

“Where three members of the Tribunal constitute a division thereof and any one of those members dies or is incapacitated or ceases to be a member thereof for any other reason

*after the division begins to deal with the industrial dispute in relation to which it was constituted but before it has made its award, another person shall be selected in accordance with the provisions of paragraph (c) of subsection (2) to fill the vacancy; thereafter the proceedings of the division shall be begun *de novo* unless all the parties to the dispute agree in writing that those proceedings may be continued as if they had not been interrupted by reason of such death or incapacity or cessation."*

Both parties agreed in writing for the Tribunal to continue hearing the dispute as though it was never interrupted.

BACKGROUND TO THE DISPUTE:

1. Sutherland Global Services (*hereinafter referred to as "the Company"*) is a multinational IT-enabled and business process outsourcing (BPO) Company specializing in back-office and customer life cycle management services for global clients.
2. Ms. Suan Smith was employed to the Company as a Consultant, as detailed in an offer letter dated October 24, 2014. She was subsequently promoted to Team Manager on September 26, 2016.
3. On October 8, 2019, it was alleged that Ms. Smith breached the Company's policies regarding verbal abuse and was subsequently placed on paid leave. Ms. Smith was later charged and participated in two (2) disciplinary hearings. The Disciplinary Panel found that Ms. Smith's conduct, including to but not limited to threatening employees, constituted a serious breach of the Company's policies and procedures. Consequently, by letter dated January 30, 2020, Ms. Smith's contract of employment was terminated. A subsequent appeal of this decision was unsuccessful, with the Appeal Panel by majority upholding the Company's decision.
4. Ms. Smith protested her dismissal and through her Representative, Mr. Howard Duncan, sought the intervention of the Ministry of Labour and Social Security. The matter was not resolved at



the Ministry; hence it was referred to the Industrial Disputes Tribunal for determination and settlement.

COMPANY'S CASE:

5. The Company called two (2) witnesses in support of its case, Ms Shauna-Gaye Stephens, Director of Human Resource and Mrs. Coleen Johnson, Manager for New Hire On-Boarding, and also a Member of the Disciplinary Panel.
6. Ms. Stephens, the Company's first witness, testified that Ms. Suan Smith's employment predicated hers, and therefore she could only speak to what was contained in the Company's records.
7. Ms. Stephens testified that she commenced employment with the Company as Director of Human Resources on May 1, 2022. She said that she became aware of the dispute when she took on the portfolio of Director of Human Resource. It is the evidence of Ms. Stephens that Ms. Smith was employed to the Company in 2014 and was a Manager at the time of her termination.
8. The Company placed Ms. Smith on Performance Improvement Plan (PIP) for similar behaviour that negatively impacted her team's performance for January, February and March 2018. She was successful in passing the PIP and improving her team's performance by demonstrating the right behaviour. However, the Company was once more forced to put Ms. Smith on a 2nd PIP for poor performance during the months of May, June and July 2019. She was successful in passing the 2nd PIP but consistently failed to exhibit the behaviours deemed appropriate by the Company, prompting the Company's interventions based on her team feedback concerning verbal abuse and discrimination.
9. On October 8, 2019, Mr. Richard Green, Associate Manager/Senior Team Manager and Ms. Tamara Burke, Associate Principal, GEO HR met with Ms. Smith regarding issues that were brought to their attention by her team members which raised concerns about her conduct. Team



members reported that Ms. Smith consistently used abusive language including shouting and calling them “duncebat” and “bottom of the barrel,” telling persons she doesn’t want them on her team, encouraging underperformers to resign, issuing threats including references to issuing documentation to prevent promotion opportunities and threatening to get five persons fired if she is fired. It was alleged that Ms. Smith breached the Company’s policies as it relates to verbal abuse and as such by letter dated October 8, 2019 from Mr. Ian Flemmings, Senior Account Manager, she was sent on Paid Leave with immediate effect. This, the Company stated would allow it to carry out a fair and impartial investigation.

10. On October 11, 2019, Ms. Burke wrote to Mr. Green providing him with a summary of what should be in the Program Report. Subsequently, on October 15, 2019, Ms. Smith received an invitation letter signed by Ms. Tamara Burke to attend a Disciplinary Hearing on October 18, 2019 along with the Program Report and witness statements. The letter outlined the specific allegations which would be considered at the hearing:

- Breaches of the Sutherland Global Employee Handbook and Sutherland Code of Conduct:
 - Discrimination based on gender
 - Intimidating, threatening or otherwise interfering with fellow co-workers (*Point 59*)
 - Urging or inviting others to refuse to work (*Point 24*)
- Breach of Sutherland Global Employee Handbook, Point 16 – conduct detrimental to Sutherland Global

11. The Disciplinary Hearing did not take place on October 18, 2019. Subsequently, On October 25, 2019, Ms. Smith received another invitation letter signed by Ms. Burke advising her to attend a disciplinary hearing on October 29, 2019. The letter again outlined the specific allegations which would be considered. The hearing did not take place on October 29, 2019 as Mr. Duncan emailed Ms. Burke stating that October 29, 2019 was not convenient to him. On October 29, 2019,



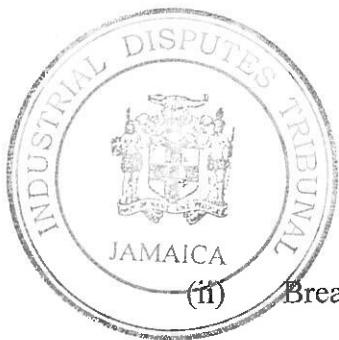
Ms. Burke responded to Mr. Duncan and informed him inter alia that during the course of the hearing, Ms. Smith will have the right to hear and question all evidence presented in respect of the allegations and to provide a statement on her behalf.

12. By letter dated October 30, 2019, Ms. Burke wrote to Mr. Duncan confirming November 6, 2019 for the Disciplinary Hearing and added an additional charge:

"She willfully breached the Labour Relations Code Section (i) whereby – Suan Smith has a responsibility, to her employer (Sutherland Global Services) to perform her contract of service to the best of her ability, to her fellow workers in ensuring that her actions do not prejudice their general wellbeing including their health and safety; to the nation by ensuring her dedication to the principle of productive work for the good of all."

13. In a letter dated October 31, 2019, Mr. Miguel Allen, Associate Manager-Security Management informed Ms. Smith that Ms. Burke's letters of October 15, 25 and 30, 2019 were withdrawn. However, the accompanying Program Investigation Report and witness statements which were submitted on October 15, 2019, remained valid. Copies of the Company's Employee Handbook and Code of Conduct were attached. Ms. Smith was also notified of charges and invited to a disciplinary hearing scheduled for November 6, 2019. The charges were:

- (i) Breaches of the Sutherland Global Employee handbook and Sutherland Code of Conduct:
 - (a) Discrimination based on gender
 - (b) Intimidating, threatening or otherwise interfering with fellow co-workers
 - (c) Disorderly, indecent, or immoral conduct including the use of abusive, threatening or profane language
- (ii) Breach of Sutherland Global Employee Handbook, Point No. 16:
 - (a) Conduct detrimental to Sutherland operations that could result in negative public perception, poor customer service, or poor client relations
- (iii) Breach of the Labour Relations Code, Section 6 (i) whereby – You have a responsibility,

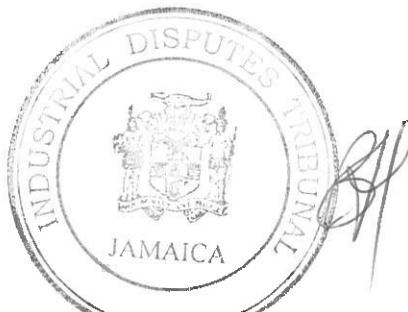


to your employer (Sutherland Global Services) to perform your contract of service to the best of your ability, to your fellow workers in ensuring that your actions do not prejudice their general wellbeing including their health and safety; to the nation by ensuring your dedication to the principle of productive work for the good of all.

14. It is Ms. Stephens evidence that before any charges are laid, the employee who is the subject of the investigation is given the investigation report and the opportunity to respond in full.
15. Two Disciplinary Hearings were held on November 6, 2019 and December 9, 2019. During the November 6, 2019, hearing, Mr. Duncan and Ms. Smith were given the opportunity to question the three witnesses (Dodine McPherson, Alexia McDonald, and Samantha Barrett) but were unable to get the witnesses to change their statements.
16. The Company's second witness was Ms. Coleen Johnson, a member of the four-person disciplinary panel tasked with considering the charges against Ms. Smith. Ms. Johnson testified that Ms. Smith's report was presented for the first time at the second hearing. Following deliberations, the Disciplinary Panel found that Ms. Smith was guilty of misconduct and determined that termination was the appropriate sanction. Ms. Smith's employment was subsequently terminated effective January 31, 2020 via a letter dated January 30, 2020 and signed by Mr. Rolando McDonald.
17. The Aggrieved Worker, Ms. Smith through her Representative appealed her termination. On April 27, 2021, the Appeal Panel, by majority decision, upheld the Company's decision to terminate Ms. Smith's contract of employment.

The Company contends:

1. that the disciplinary process employed was in full compliance with its policies
2. that the disciplinary process was done in accordance with the provisions of the Labour Relations Code and the Principles of Natural Justice.

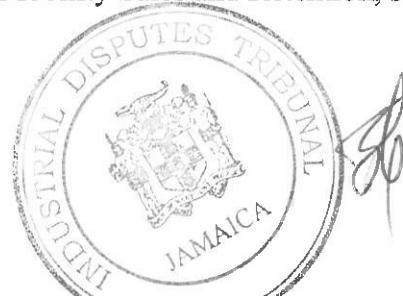


3. that it complied with its policies and procedures and even if there was evidence of non-compliance the breaches in question did not impact the integrity and fairness of the disciplinary process.
4. that the proof of the charges which were laid against the Aggrieved Worker was dependent on the witnesses who testified and the documentary evidence presented at the hearing. As such, the Company did not require the evidence of Mr. Allen to prove any of the charges, especially in the light of the fact that Mr. Allen was not a witness to the matters which the aggrieved worker had committed.
5. Mr. Rolando McDonald did not undertake multiple roles in the disciplinary process and played no role in the disciplinary panel's deliberations.

18. The Attorney, on behalf of the Company, submits that Ms. Smith's termination was justifiable, and asked that the Tribunal so finds. In the event, the Tribunal finds the dismissal unjustifiable, it submits that reinstatement would be an unsuitable and inappropriate remedy as the Company would have lost trust and confidence in her.

THE AGGRIEVED WORKER'S CASE:

19. The Aggrieved was the sole witness in her case.
20. Ms. Suan Smith started working with the Company on October 27, 2014 as a Consultant and was later promoted to Team Manager in September 2016. Ms. Smith was required to attend management meetings frequently and would normally be held responsible for low productivity if the employees that she manages failed to meet the performance standard. As a Manager, Ms. Smith sought ways to motivate her Team Members and, when necessary, would recommend appropriate disciplinary measures.
21. On October 8, 2019, Mr. Ian Flemmings met with Miss Smith to discuss concerns regarding her team's overall productivity and Aux Usage for the month of October. He expressed to her the importance of effectively managing the metrics. Ms. Smith said that she expressed to him that due to the conversion from AT & T Sales Campaign to Mobility Sales and Retention, she had not



been the supervisor for the team since September 2019. She also expressed to him that October 8, 2019 was her second day back on the production floor with the full staff complement since the conversion.

22. After the meeting, Mr. Flemmings requested that Miss Smith send Ms. Alexia McDonald to his office, as she was the outlier for the team's overall poor performance. Upon her return, Ms. McDonald informed Ms. Smith that Mr. Flemmings wished to speak with the entire fourteen-member team, with the exception of her (Ms. Smith). When the team members returned to the production floor, they informed Ms. Smith that Mr. Flemmings and Ms. Burke had asked them if they had completed the Leadership Survey which was submitted to them. Each employee was asked to provide their opinion of Ms. Smith as their Team Manager and to individually write their feedback on paper. Some of the employees, having recently joined the Company were hesitant to provide their opinion. Of the fourteen team members, only three expressed any negative feedback, and these three were asked to submit a formal complaint to the Company.
23. Later that day, (October 8, 2019), at approximately 7:42 pm, Miss Burke and Mr. Green met with Miss Smith and informed her that she would be sent off on Paid Leave. She was handed a letter signed by Mr. Flemmings which outlined issues brought to management's attention concerning her conduct. The letter alleged that she was in breach of Company's policies related to verbal abuse and stated that she was being placed on paid leave with immediate effect to allow the Company to carry out a fair and impartial investigation. In the letter, she was encouraged to be accompanied at the interview by a representative and informed that should any additional allegation(s) come to light during the course of the investigation, she would be advised in writing. She was also told that any information obtained during the investigation process, may be presented at a subsequent disciplinary hearing, if the Company decided to proceed to a disciplinary hearing. She was advised that she would be informed in writing of the outcome of the investigation following its conclusion.



24. Ms. Smith contends that she was not invited to any interview or provided with any information about the investigation. She was not asked to respond to any of the allegations that were made by the employees, prior to being sent on paid leave.

25. On October 11, 2019, Ms. Burke sent an email to Mr. Green, providing him with a summary of what should be included in the Program Report.

26. Miss Smith was informed of the allegations against her via a letter dated October 15, 2019. This letter formally invited her to a disciplinary hearing scheduled for Friday, October 18, 2019. Attached to the letter were three witness statements and a program report dated October 15, 2019. The witness statements dated October 8, 2019 had no dates when the alleged incidents occurred nor was there any time frame of the occurrences. She was advised of who would comprise the disciplinary panel, and that she (Ms. Burke) would be presenting the case for the Company while Mr. Green will present the findings from the investigation.

27. The disciplinary hearing originally scheduled for October 18, 2019, was cancelled. Miss Smith was subsequently notified by a letter dated October 25, 2019, that the hearing had been rescheduled to October 29, 2019. On October 29, 2019, Ms. Burke received an email from Mr. Duncan, who informed her that he was acting on behalf of Ms. Smith. He objected to the charges against Ms. Smith and demanded proof of any alleged breach of company policy. Furthermore, he informed Ms. Burke of his unavailability to attend the disciplinary hearing scheduled for October 29, 2019. As a result, the hearing was rescheduled for November 6, 2019.

28. Mr. Duncan also raised an objection to Ms. Burke's participation in the disciplinary hearing. He asserted that Ms. Burke appeared to have a vested interest in Ms. Smith being disciplined. This, he contended constituted a breach of the principles of natural justice which resulted in Ms. Burke's recusal from any further participation in the case.



29. On October 31, 2019, Mr. Miguel Allen, Associate Manager – Security Management, sent a letter to Ms. Smith advising her that the letters previously sent by Ms. Burke dated October 15, 25, and 30, 2019, were withdrawn. The letter also informed Ms. Smith of the specific charges leveled against her and invited her to a disciplinary hearing scheduled for November 6, 2019. The letter further confirmed Ms. Smith's receipt of the following documents:

- Paid Leave Letter dated October 8, 2019
- Program Investigation Report (October 15, 2019)
- Employee Statements (provided October 15, 2019)
- Amended Program Investigation Report (provided October 25, 2019)
- Labour Relations Code
- Ms. Smith's Code of Conduct Completion Certificate
- Transcript of Ms. Smith's online training records



30. The Aggrieved Worker contends that Mr. Allen did not conduct any new investigation and that he relied on the same evidence and reports used by Ms. Burke.

31. At the 1st disciplinary hearing held on November 6, 2019, the Aggrieved Worker Representative through the Chairman of the Disciplinary Panel requested the presence of Mr. Allen at the next disciplinary hearing scheduled for December 16, 2019. However, Mr. Allen declined the request in an email dated December 16, 2019, stating he was neither involved in the investigation nor a witness to any of the alleged serious misconducts. He further stated that he did not have enough information to respond to or write a witness statement and does not see how his testimony could help the case.

32. On November 22, 2019, Miss Shernette Clarke wrote to the Chairman of the Disciplinary Panel, Reverend Deventon Smith. In her letter, Ms. Clarke contended *inter alia* that Mr. Duncan's repeated requests constituted a "fishing expedition," and that he had misrepresented facts and made redundant and irrelevant statements. The Chairman responded to Ms. Clarke stating that "*Ok Shernette you are so right. Noted.*" Mr. Duncan contends that the Chairman's comments could be interpreted that he had supported the Company's position and therefore was no longer

independent. Despite the request for the panel to recuse itself, it proceeded to continue hearing the matter.

33. Following the disciplinary hearing, Ms. Smith's employment was terminated by letter dated January 30, 2020. The decision to terminate Ms. Smith's employment was appealed and a decision made on April 27, 2021. The Appeal Panel by majority decision upheld the Company's decision to terminate Ms. Smith's contract of employment.

The Aggrieved Worker contends that:

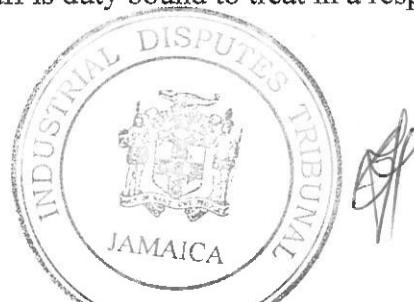
1. She committed no offence
2. A case of bias was made out against Mr. McDonald based on his participation prior to, during the hearing and he also signed the letter of termination
3. The documents collected by Ms. Burke, which the Company stated were withdrawn, should not have been used at the disciplinary hearing.
4. They requested for Mr. Allen and Ms. Burke to attend the hearing to provide evidence as to who did the investigation, collected the report and charged Ms. Smith but the request was denied
5. Since Mr. Allen could not assist the panel, on what basis was Ms. Smith charged
6. An objection was raised concerning the impartiality of the disciplinary panel, citing suspected bias.
7. The Principles of Natural Justice and the Labour Relations Code were not observed

34. Miss Smith requested that the Tribunal find her dismissal unjustifiable and order her reinstatement with compensation from the date of the dismissal to the date of the Award.

TRIBUNALS' RESPONSE AND FINDINGS:

The first question that the Tribunal asked itself was, did the Company have reasonable grounds to carry out an investigation?

35. Management in discharge of its responsibilities to its staff is duty bound to treat in a responsible



manner any issue brought to their attention that could adversely impact the Company's operations, reputation, or success. Investigations are always necessary in determining the veracity and level of any allegations, so that conclusions are factually supported, impartially determined and the principles of natural justice are considered at all times.

36. We are therefore satisfied on the evidence that the Company was well within its rights to suspend Ms. Smith with full pay pending an investigation after receiving complaints about her conduct from the three complainants. Despite affirming the right to suspend and investigate, the Tribunal did raise concerns regarding the manner in which evidence was collected from the team members. The process employed by management diverged significantly from the Company's established protocol as outlined in its Handbook. The Company's Handbook mandates a specific, voluntary reporting procedure for acts of discrimination, which states:

"Employees should report acts of discrimination to a member of management, Human Resources or any member of the senior leadership team. Except where the immediate line manager is the perceived aggressor, the report should be made to the next manager in line."

37. Management's action of actively questioning staff, rather than following up on a formal, voluntary complaint as outlined in the Handbook, raises serious procedural doubts. This approach could be viewed as creating a pretext for disciplinary action, potentially leading to a flawed or non-impartial evidence-gathering process.

The second question for the Tribunal to determine is whether the Company conducted a fair and proper investigation prior to issuing charges against Ms. Smith.

38. The unchallenged evidence presented to the Tribunal indicates a concerning sequence of events leading up to the formal charges against Ms. Smith. On October 8, 2019, Mr. Ian Flemmings met with Ms. Smith. Following this meeting, he summoned Ms. Smith's fourteen (14) supervisees. Three (3) of the employees who spoke negatively about Ms. Smith were asked to formalize their complaints in writing.



39. Immediately following this meeting, Ms. Tamara Burke and Ms. Smith's supervisor, Mr. Richard Green, met with Ms. Smith and handed her a letter signed by Mr. Flemmings, placing her on paid administrative leave effective October 8, 2019 pending an investigation.

40. Ms. Smith's actions were said to be in breach of the Company's policies as it relates to verbal abuse. Consequently, on October 15, 2019, Ms. Smith received a letter signed by Ms. Burke setting out the charges and inviting her to a disciplinary hearing scheduled for October 18, 2019. She was provided with copies of the statements from the complainants, Dodine McPherson, Alexia McDonald, and Samantha Barrett, along with a program report from Mr. Richard Green. Ms. Burke provided Mr. Green with a summary of the content to be included in the Program Report/Investigation Report. Ms. Smith was not provided with any details regarding the matters resulting in the charges, nor was she asked to provide a written response up to the point of receiving the charge letter on October 15, 2019. The hearing was postponed and a subsequent letter dispatched, rescheduling the hearing, to October 29, 2019. Other charge letters were issued to Ms. Smith by Ms. Burke. However, Mr. Duncan's objected to her dual role in both the investigation and the issuance of charge letters. Consequently, the previously issued charge letters were withdrawn, and Ms. Burke's involvement in the matter ceased.

41. On October 31, 2019, Ms. Smith received a new and final charge letter from Mr. Miguel Allen, Associate Manager, Security Management inviting her to a disciplinary hearing scheduled for November 6, 2019. This letter included one additional charge while simultaneously withdrawing one of the previous charges. The initial charges, presented by Ms. Burke, were based on witness statements and an amended program report, which Mr. Allen utilized. In a letter dated November 1, 2019, Mr. Allen informed Mr. Duncan that he had drafted the new charge letter after reviewing the evidence, which he considered sufficient grounds to proceed with a case against Ms. Smith.

42. The procedural irregularities in the events leading up to the disciplinary hearing did not escape the attention of the Tribunal. The Tribunal notes the response given by Ms. Stephens during



cross examination by Mr. Duncan:

Q: So can the Manager of the Manager conduct the investigation

A: Yes, where they are separate from the matter

43. Mr. Green being Ms. Smith's direct report was involved in the process from the outset. The Principles of Natural Justice demand that an investigation be conducted by an independent and unbiased party. Mr. Green's position and actions appear to be a direct violation of this principle. Mr. Green's role was solely to objectively gather and present the facts. In addition, the program report that he prepared recommended a sanction of dismissal which is in direct contravention of the Company's Disciplinary Policy. The Policy states:

The program/department will prepare an Investigation Report outlining the details and evidence of the charges. *It should not include the sections dealing with the requested sanction to be applied and policy excerpt supporting recommendation for termination*
(Emphasis ours)

44. The Company during its investigations of the allegations of Ms. Smith did not follow its own policy with respect to the investigative process.

45. The Company's Disciplinary Policy Section 5.3.1 (Investigation procedure) states that:

"Investigations maybe initiated with a written statement of compliant/allegation(s) for Information Security or Physical Security and Safety related allegations, the Information Security Department and/or Security and Safety Department, may send an initial report to Program Manager and HR naming the interested parties. Prior to the initial report, Information Security Department and/or Security and Safety Department will engage persons of interest with an invitation to a scheduled investigation meeting and response in writing to possible allegations OR the option of disclosing the allegations and/or statements to the accused employee and then give him/her a deadline to respond to this report in writing."

2. For investigation initiated by Service Delivery OR the Human resource Department, the

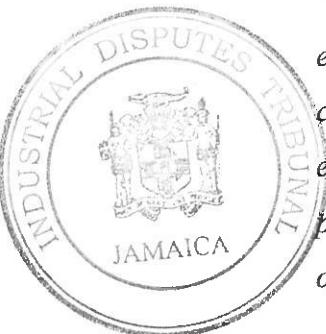
Program or Human Resources will exercise the option of disclosing the preliminary Investigation Report and/or statements to the accused employee and then give him/her a deadline to respond to this report in writing. This would precede the issuing of a charge letter. (Emphasis ours)

46. Quite noticeable was also the fact that Mr. Allen did not have the benefit of reviewing Ms. Smith's response in his contemplation of the possible charges to be laid against her. This sequence of events raises concerns regarding the fairness and impartiality of the process as a charge letter was prepared, although a full and proper investigation was not done.

47. The Tribunal agrees with the Appeal Panel's decision that the investigatory process was in breach of the Company's written policy. However, the Tribunal disagrees with the Appeals Panel's finding that a faulty element in the investigative process would not prejudice Ms. Smith's rights before a disciplinary panel. The Tribunal is of the view that, where the investigation is perceived as unfair or inadequate, it undermines the credibility of the disciplinary process. This point was clearly highlighted in the Disciplinary Hearing Minutes when Mr. Venton Brown made the statement that Ms. Smith had been given an opportunity during the investigative process to respond to the complainants' statements, implying she was well aware of the allegations against her in advance. However, a critical fact contradicts Mr. Brown's assertion and validates the Tribunal's concern as Ms. Smith was only provided with the statements from the complainants on October 15, 2019 when she was issued with a charge letter.

48. The Tribunal found a compelling reference in the Appeals Panel's citation from **Selwyn's Law of Employment – Astra Emit 21st edition (2020)**, specifically on page 336, where it states that:

"No disciplinary action should be taken in advance of a proper investigation by the employer ... when a disputed allegation is made against an employee a careful and conscientious investigation must be carried out and the investigator must focus no less on evidence that may exculpate the employee or at least point to his innocence. This is particularly so when the employee is suspended and has thus being denied an opportunity of being able to contact potentially relevant witnesses."



The third question to be answered, Did Ms. Smith commit the offences that she was alleged to have committed, and if so, were the offences gross enough to have warranted dismissal?

49. The Tribunal in analyzing the evidence must point out that there was no date as to when the incidences as outlined in the witnesses' statement took place. The absence of specific dates for the alleged incidences is highly significant and often problematic for disciplinary hearings, especially those leading to termination. Ms. Smith's testimony, asserting she hadn't supervised the team since September 2019 and that October 8, 2019, was only her second day back on the production floor with the full team raised questions about the precise timing of the alleged incident/s.

50. The burden of proof is on the employer to prove that the dismissal of Ms. Smith was fair and consistent with good industrial relations practices. The Tribunal notes with concern the absence of *viva voce* evidence from the three (3) complainants, Dodine McPherson, Samantha Barrett, and Alexia McDonald, despite their statements being submitted as evidence by the Company. This omission is notable, given that these individuals played a crucial role in what resulted in Ms. Smith's termination.

51. Ms. Smith testified that the witness statements submitted to the Tribunal differed from those presented at the disciplinary hearing. Ms. Colleen Johnson, a panelist of the disciplinary hearing gave evidence that the submitted statements were indeed those used at the disciplinary hearing. Quite notably, the Program Report stated that team members reported several concerning details about their interactions with Ms. Smith, including her allegedly calling them "dunce bat" and "bottom of the barrel." It also claimed she threatened to "beat her ass" if she encountered a "detractor on the call." However, none of these specific allegations were recorded in any of the official statements provided.

52. The Tribunal, after a careful analysis and comparison of the three complainants' statements with their testimonies at the Disciplinary Hearing, identified numerous contradictions; for example:



- *Alexia McDonald* initially stated that "Suan said if she was fired, her bad man cousin from Kingston would come and deal with them." However, when questioned by Ms. Johnson, "have you ever overheard Suan saying bad man cousin from Kingston to anyone," her response was "no."
- *Samantha Barrett*, when asked by Mr. Duncan, "has Suan ever discriminated against your gender, used profane or indecent words or threatened you," responded "no."
- Dodine McPherson also provided the same response to that very same question posed by Mr. Duncan.

53. Given these conflicting testimonies, it was crucial for the Tribunal, as the finder of fact, to have had the opportunity to hear *viva voce* evidence from Dodine McPherson, Samantha Barrett, and Alexia McDonald. This would have allowed the Tribunal to assess the veracity of the statements and resolve the discrepancies.

54. Of importance to note is the evidence of Ms. Colleen Johnson, a Member of the Disciplinary Panel when cross examined by Mr. Duncan had this to say:

Q: I am suggesting to you that all the three witnesses that were called, the workers that wrote reports against Ms. Smith none of them at the hearing supported the content of the charge and the submission made by Shernette Clarke that Smith used the words 'dunce bat' or any other such slogans. I am suggesting to you that none of them supported that allegation made by Shernette.

A: None of the witnesses supported that the term 'dunce bat' was used

Q: Correct

A: That's correct

Were the offences gross enough to warrant dismissal?

55. Based on the Company's disciplinary policy, the final step in the employee disciplinary process is termination, pending the outcome of a disciplinary hearing. This step is usually taken after repeated failure of the employee to correct the problem. It may also result where the action is a



“Zero Tolerance” or where the magnitude of the problem or behavior of the employee’s prior record warrant termination.

56. The Tribunal is duty bound to have regards for the Labour Relations Code (LRC). Section 3(4) of the Labour Relations and Industrial Disputes Act (LRIDA) states:

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

57. The purpose of the Labour Relations and Industrial Disputes Act and the Labour Relations Code is to promote good industrial relations which include (inter alia) the principle of developing and maintaining good personnel management techniques designed to secure effective co-operation between workers and their employers and to protect workers and employers against unfair labour practices.

58. In the Village Resorts limited v IDT, Bingham JA stated that:

“A fortiori for a dismissal to be lawful within the meaning of the Act therefore , it is not sufficient for the employer to show that by the employee’s conduct there was a breach of some fundamental term of the employee’s contract in the strict sense, giving him the right at law to dismiss the employee, but the employer must go further to establish that this action in dismissing the employee was justified i.e. capable of being justified within the meaning to be ascribed to that term by the Tribunal, taking into consideration all the circumstances of the case.”

59. The Disciplinary Panel in coming to its decision found that Ms. Smith was guilty of ‘*misconduct*’ and concluded, that the investigation was reasonably carried out. The Tribunal, however, finds that the Company was non-compliant with its own written policy. The Disciplinary Panel from

the outset of the hearing was required to examine if the procedure followed through the investigation was fair. It concluded that Ms. Smith's conduct included but was not limited to threatening employees, which it stated was a major breach of the Company's policies and procedures. Pursuant to the Company's Employee Handbook, the disciplinary sanctions applicable to the charge of intimidating, threatening or otherwise interfering with fellow co-workers are as follows:

- First offense - suspension or dismissal
- Second offense: dismissal.

60. Para 22 (ii) of the Labour Relations Code states that:

"No worker should be dismissed for a first breach of discipline except in the case of gross misconduct."

61. The Tribunal finds that Ms. Smith was not terminated for gross misconduct but rather for misconduct, a less serious offense and the Company presented no evidence of any prior disciplinary infractions during her employment. Notably, Ms. Smith was initially engaged as a Consultant in October 2014 and subsequently promoted in 2016.

62. The charge against Ms. Smith for "*conduct detrimental to Sutherland operations that could result in negative public perception, poor customer service, or poor client relations,*" which carries a penalty of dismissal for a first offence was not proven. No evidence was presented to substantiate the allegation that Ms. Smith's conduct met this threshold. As it relates to the charge of "*disorderly, indecent or immoral conduct including the use of abusive, threatening or profane language*" was similarly not proven due to a lack of substantiating evidence.

The fourth question, was the procedure adopted by the Company in keeping with fair industrial relations practices?

63. The Tribunal acknowledges that the Company has a right to manage its operations as it deems appropriate in order to achieve its goals and objectives, however, it ought to be mindful of the manner in which this right is exercised.



64. The Company cited Ms. Smith's poor performance and placement on a Performance Improvement Plan (PIP) twice as grounds for action. However, the evidence indicates that Ms. Smith successfully completed the PIP on both occasions it was issued. The Program Report introduced an inconsistency regarding the grounds for the PIP. While the Report stated that Ms. Smith was placed on the PIP for behavioural issues (verbal abuse, threatening employees, and discrimination) that negatively impacted her team's performance, the metrics cited for improvement focused instead on inconsistent overall performance related to client metrics over the preceding three months.

The areas mentioned that she needed to improve on were:

1. Using all reports and resources effectively
2. Coaching effectively and timely
3. Effectively managing team
4. Effective communication to all levels (written and oral)
5. Effective time management



65. The Tribunal notes with interest that despite the Company's claim that Ms. Smith consistently failed to demonstrate the behaviours deemed fit by leaders, there is no record of formal written warnings or disciplinary action concerning verbal abuse, threatening employees, and discrimination.

66. Even though the Program Report mentioned excerpts from the performance appraisal report, the complete document was never provided. It is to be noted that though it was requested at the disciplinary hearing by Mr. Duncan, he was told that he could only view the document and would not be given a copy. There was no evidence that he was even shown the document, neither was it tendered into evidence before the Tribunal. This omission prevented Ms. Smith and her representative from adequately preparing for her defense as it relates to her performance. The rules of natural justice dictates that a person called upon to answer charges should be informed of such charges well in advance so that they can properly prepare their defense. Based on the facts gleaned Ms. Smith was not terminated for performance but for conduct.

67. Secondly, Ms. Shernette Clarke who represented the Company communicated with Reverend Deventon Smith, Chairman of the Disciplinary Panel, in a letter dated November 22, 2019. This correspondence followed the initial disciplinary hearing and occurred prior to the second. In Ms. Clarke's letter she expressed concerns regarding the conduct of the proceedings held on November 6, 2019. She highlighted the volume of evidence against Ms. Smith, alleged that Mr. Duncan was conducting a 'fishing expedition,' and commented on the relevance of the evidence presented. Reverend Smith responded to Ms. Clarke's letter via email dated November 22, 2019 stating:

"Ok Shernette, you are right, you are so right, noted."

68. Consequently, Mr. Duncan requested the panel's recusal. The Tribunal questioned whether Reverend Smith's comment could prejudice Ms. Smith right to a fair hearing. The appearance of bias is a fundamental tenet of natural justice. The Rules of Natural Justice require a decision maker to be impartial and to make a decision based on a balanced and considered assessment of the information and evidence before them without favouring one party over another. Even where no actual bias exists, investigators and decision makers should be careful to avoid the appearance of bias. *The Supreme Court Judgment in Bank of Jamaica (BOJ) v Industrial Disputes Tribunal and the Bustamante Industrial Trade Union [2017] JMSC Civ 173* is, for the Tribunal, indistinguishable from this case, where *Evan Brown, J* laid out very clearly and succinctly issues relating to apparent bias. The Learned Judge quoted from *Lord Hewart C.J in the R v Sussex Justices, ex p McCarthy [1924] 1 K.B. 256*, at 259 who said:

"A long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done".

69. The Learned Judge went on to say that *whenever the issue of apparent bias is raised, the pivotal consideration is not "what actually was done but what might appear to be done" (R v Sussex Justices ex p McCarthy, supra)*.



70. In light of these circumstances, the Tribunal agrees with Mr. Duncan's position that Reverend Smith's response gave rise to the appearance of bias. Therefore, Reverend Smith should have recused himself from the matter.

71. Thirdly, the letter of termination was signed by Rolando McDonald and interestingly the subject of the letter was '*Outcome of disciplinary hearing.*' The letter stated that '*the panel have decided that you should be dismissed for misconduct with four weeks' pay in lieu of notice.*'

72. In re-examination of Ms. Johnson by Mr. Gordon, the following questions were asked of her and the answers were given as follows:

Q: Who has the power to terminate an employment contract at Sutherland?

A: That would be our country head at the time, yes, mainly our country head and probably in conjunction with senior directors, but certainly the last word would be the country head.

Q: What was Rolando McDonald's role at the material time?

A: Okay, he was the HR Manager

Q: And to be clear, what level of authority would he have when it comes to the question of terminating the employment contract?

A: None at all

73. The Tribunal finds that based on the evidence adduced, the disciplinary panel was not in a position to terminate Ms. Smith's employment as the Company would want this Tribunal to believe. The panel's role was really to make a recommendation, and the final decision would be that of the Country Head.

74. The Tribunal will now turn its attention to the issue of a participant assuming '*multiple roles*' a fundamental breach of one of the rules of natural justice, i.e. *Nemo Judex in Causa Sua* (no one should judge in his or her own case). Mr. McDonald appears to have played a material role in the disciplinary process. Ms. Johnson during cross examination by Mr. Duncan, confirmed his



involvement, when she was asked the following question:

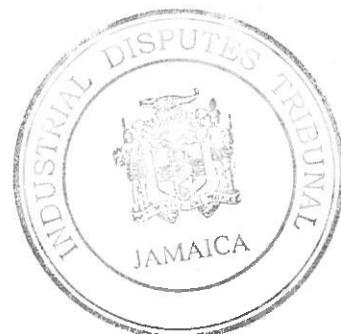
Q: *Mr. Rolando McDonald was the HR Advisor to management ... and it is your evidence that Rolando 's job was to call the witnesses, correct, and you are now seeing on the email thread that Rolando in all communication he was always copied on them, correct?*

A: *Correct*

75. Mr. McDonald's involvement in the disciplinary process (HR Advisor to management) would have disqualified him from reviewing the disciplinary panel's recommendation and being a part of the Company's final decision to dismiss.

76. In this case, the procedural irregularities gave rise to a clear appearance of bias from the outset. The Tribunal therefore concludes that the Company's conduct of the proceedings was not in keeping with the principles of natural justice and ran counter to standard industrial relations practice.

77. In light of the above, the Tribunal finds that Ms. Suan Smith was unjustifiably dismissed and awards accordingly.



Q

AWARD:

78. The Tribunal in accordance with Section 12 (5) (c) (iii) of the Labour Relations and Industrial Disputes Act, 1975, makes the following award:

(i) That Ms. Suan Smith be reinstated to her employment on or before November 24, 2025, and be paid with one hundred and thirty (130) weeks basic pay at the current rate as compensation for her unjustified dismissal

Or

(ii) Failure to comply with (i) above that Ms. Suan Smith be compensated in the amount of one hundred and eighty weeks (180) basic pay at the current rate in full and final settlement for her unjustified dismissal.

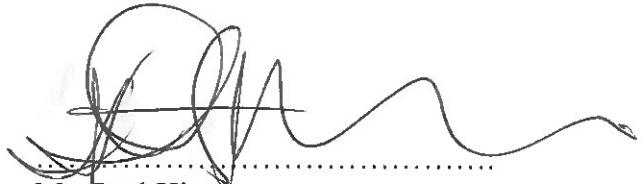
DATED THIS 5th DAY OF DECEMBER 2025



Mr. Bindley Sangster
Chairman



Mrs. Jacqueline Irons, J.P.
Member



Mr. Paul Hines
Member

Witness:



Royette Creary (Miss)
Secretary to the Division