

**INDUSTRIAL DISPUTES TRIBUNAL**

**Dispute No.: IDT 3/2013**

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**SETTLEMENT OF DISPUTE**

**BETWEEN**

**TEACHER'S INCOME PROTECTOR FRIENDLY SOCIETY (T. I. P)**

**AND**

**THE UNIVERSITY AND ALLIED WORKERS UNION (U.A.W.U.)**

**AND THE**

***AWARD***

**I.D.T. DIVISION**

**MR. NORMAN WRIGHT, Q.C. - CHAIRMAN**

**MR. RION HALL - MEMBER**

**MR. D. TREVOR McNISH - MEMBER**

**DECEMBER 18, 2015**

**IDT 3/2013**

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

TEACHER'S INCOME PROTECTOR FRIENDLY SOCIETY (T.I.P)  
(THE SOCIETY)

AND

THE UNIVERSITY AND ALLIED WORKERS UNION  
(THE UNION)

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**REFERENCE:**

By letter dated February 1, 2013, the Honourable Minister of Labour and Social Security pursuant to Section 11A(1) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

***"To determine and settle the dispute between Teacher's Income Protector Friendly Society (T.I.P.) on the one hand and the University and Allied Workers Union (U.A.W.U.) on the other hand, over the dismissal of Mr. Noel Williamson."***

**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. Norman Wright, Q.C | - | Chairman                     |
| Mr. Rion Hall          | - | Member, Section 8(2)(c)(ii)  |
| Mr. D. Trevor McNish   | - | Member, Section 8(2)(c)(iii) |

**REPRESENTATIVES OF PARTIES:**

The **Society** was represented by:

- |                       |   |                   |
|-----------------------|---|-------------------|
| Mr. John Bassie       | - | Attorney-at-Law   |
| Miss Kerry-Ann Tracey | - | Attorney- at -Law |

The **Union** was represented by

- |                     |   |  |
|---------------------|---|--|
| Mr. Garfield Harvey | - | 3 <sup>rd</sup> Vice President, U.A.W.U. |
|---------------------|---|--|

In attendance were:

- |                             |   |                      |
|-----------------------------|---|----------------------|
| Mr. Noel Williamson         | - | Aggrieved Worker     |
| Mrs. Nadine Burnett-Needham | - | Actg. Chief Delegate |
| Miss Shari Ayers            | - | Secretary/Delegate   |

**SUBMISSIONS AND SITTINGS:**

Briefs were submitted by the parties and oral submissions made during twenty-two (22) sittings, from April 23, 2014 to September 24, 2015.

**BACKGROUND TO THE DISPUTE:**

TIP was established in September 1997 as a non- profit based insuring Society for all persons employed in the field of education in Jamaica. It is registered under the Friendly

Societies Act of 1966 and is regulated by the Registrar of the Department of Co-operatives & Friendly Societies and is governed by a Committee of Management (Board) which is comprised of fifteen (15) members.

The Society's main goals are to:

- Provide income protection to all persons employed in the field of education in Jamaica.
- Become the company of choice for the savings and insurance needs of the persons employed in the Education Sector.
- Improve the efficiency of the operations.
- Enhance the training programme to ensure that the staff members are equipped with the requisite skills and professionalism to serve the members effectively and efficiently.
- Enhance training sessions with the Contact Teachers to make them more equipped with carrying out their mandate within their respective schools (place of employment).
- Improve technology to enhance the service delivery.

All the above reflect its Mission Statement of:

*“To improve the economic, social and health status of members and staff while contributing to the development of the wider community, by providing thrift and credit facilities, sickness, accident and death benefits in the most reliable, efficient, professional and accountable manner.”*

To achieve the above, the Society has offices strategically established, in what it considers convenient locations and comfortable environments, island-wide, to offer timely and professional service to its members. Its head office is situated at 80 Half Way Tree Road, Kingston 10, with three others in Mandeville, Manchester, Montego Bay, St. James and Ocho Rios, St. Ann, respectively.

Mr. Noel Williamson was employed to Teachers' Income Protector Friendly Society (TIP) in September of 1995 but in February 2012 he was handed a letter of dismissal

which he found strongly unacceptable. He considered that his dismissal was unjustified and through his Union, the University and Allied Workers Union (UAWU), the matter was referred to the Ministry of Labour & Social Security. The matter remained unresolved at that level resulting in the Minister by letter of February 1, 2013, referring it to the Industrial Disputes Tribunal, as a dispute to be determined and settled.

**THE SOCIETY'S CASE:**

The Society contends that among its staff compliment, the Society engages four (4) Service Representatives whose main responsibilities are the sale and servicing of its various products to members and prospective members at specific assigned schools and parishes across the island. Mr. Noel Williamson was one such Service Representative and was assigned to the parishes of St. Mary, St. Ann and Trelawny.

Each Service Representative is assigned defined and agreed objectives and quotas set by the Society. Reports are generated as to the results from the sale activities and periodic meetings are held on a regular basis with the relevant parties, to discuss the outcomes and to strategise for the future.

Some time during 2011, the performance of the Service Representatives came under scrutiny, due to the non achievement of quotas, resulting in a meeting with all four (4) Service Representatives on September 9, 2011. The meeting was chaired by the then Managing Director and from evidence provided by the Chairman of the Marketing Committee, was called to address complaints by the Service Representatives concerning such issues as costs and dealing with expenses occasioned by being on the road. On the other hand, the Managing Director on behalf of the Society was concerned about the low performance, as some of them were not meeting as much as 50% of their quota. In fact none was meeting their quota. The poor performance had continued for as long as two years and discussions were held to see how it could improve. The result of the meeting was that there should be an improvement and it was agreed that if no solution was found, alternatively they would part company.

In her further evidence, the Chairman of the Marketing Committee, said that there were previous meetings on this matter and at the meeting of September 9, 2011, three of the Service Representatives gave an assurance that all they wanted was to separate. On the other hand, Mr. Williamson indicated that if his loan was written off, he would be prepared to go further with the Society. The Managing Director then agreed to meet with them again but it was her firm opinion that the other three Sales Representatives had made up their minds to go.

On the 20<sup>th</sup> September, 2011, another meeting was held and it was agreed by all at the end that three of the four representatives would resign. Mr. Williamson was given another opportunity to improve his performance, failure of which led to the termination of his employment on February 21, 2012, by the Society.

Further evidence was led through the Marketing Manager, who advised that she was responsible for promoting the Society's products and managing the sales and marketing. She advised that there are six (6) designated regions across the island with an agent assigned to each. Each agent has a sales quota of Two Hundred Thousand (\$200,000) dollars per month, excepting for July and August (in view of holidays). Service Representatives are rewarded for satisfactory production by cash incentives. Non-attainment of quota is usually dealt with either orally or in writing, dependent on the levels of default. Regular meetings are held where detailed discussions on quotas, concerns and new issues are dealt with. Concerns are taken by her to the Management Committee and if necessary to the Board.

Speaking specifically to her knowledge of the performance of Mr. Williamson, she said that in her opinion she classified his performance as being poor. Some months were at quota, most below and some had no sale at all. Overall, she thought he under-performed. She claimed Williamson always gave excuses such as bad road conditions, his motor vehicle condition and economic conditions. To this end, she posited that TIP provided loans to assist with motor vehicle problems.

She was present at the meeting of September 20, 2011, and was responsible for taking the notes of the meeting. (Notes tendered as Exhibit #1) The purpose of the meeting was to deal with outstanding concerns from a previous September meeting and was to deal with the Service staff concerns as to issues affecting them. The meeting was called by the General Manager and he stated that it was to conclude with a common understanding by all parties involved. According to the notes, after the Service Reps/Managers stated their concerns, the General Manager asked them what could be done to rebuild the relationship in the Marketing and Sales Department to which the following responses were recorded:

- ***“Mr. Williamson expressed that the Society could take the first step in writing off his loans. This, he states will assist him in being able to cope a little better with the travelling expenses to meet with his clientele within his region. He also expressed that there needs to be an improvement in the communication process.***
- ***Mr. Henry said the environment is conducive to reality; and he is not in agreement with the Committee of Management’s (Board) philosophy.”***

It was concluded by Mr. Thomas, Mr. Henry and Mr. Williamson that they would be more interested in another type of negotiation: that of separation.

Mr. Sang stated that since coming to a common ground is not feasible, then it is best for us to part. He pointed out that it is pretty clear where we are going. He said he will accommodate individual discussions as to this type of negotiation, and take it from there.

The meeting ended with Messers. Thomas, Henry and Williamson each shaking hands with Mr. Sang to confirm meeting with him individually, as it relates to the negotiation of separation.

She recalled being advised that two of the Service Representatives, after meeting individually with the General Manager, tendered their resignations while Mr. Williamson was dismissed. The letter of dismissal dated February 21, 2012, tendered as Exhibit 5, outlined the basis of his termination, as follows:

*“As you are aware the Society has communicated with you, as far back as 2007 that your production has declined drastically.*

*We refer to our letters to you dated February 28, 2008, and January 2, 2009 and most recently April 12, 2011 and the recommendations therein. We have noted, based on the 2011 Monthly Production Survey, that there has been no improvement.*

*Unfortunately, we are left with no alternative than to terminate your employment with us, effective immediately.”*

Overall the Society claimed that it recognises the Labour Relations Code (LRC), the importance of its rules and made every attempt to comply with the provisions therein.

The Society is also cognizant of the principle of developing and maintaining good personnel management techniques designed to secure effective cooperation between workers and employers and to protect workers and employers against unfair labour practices. To this end, it acknowledges the Disciplinary Procedure outlined in Section 22 of the Code, based on which the codified, TIP Friendly Society Disciplinary Code has been developed. It directs employees regarding the disciplinary procedures of the Society which complies with the requirements of the LRC. Consequently, where an employee displays conduct that falls under the disciplinary code as requiring remedial action, the Society adopts the approach of issuing warnings before dismissal.

In its closing, Counsel for the Society contended that, the Union would want us to believe that Mr. Williamson was treated unfairly and was unceremoniously dismissed and that after he had given years of commendable service, was deprived of a fair hearing. In fact, Mr. Williamson was not a victim. Instead, there was an agreement that there would be a separation from the Society but this was at the behest of Mr. Williamson, who along with the other Service Representatives, in meetings with the then General Manager, who had made the suggestions. Evidence provided by one of the Society’s witnesses, was that Mr.

Williamson even suggested that he would take separation if the Society agreed to write off his loan which does not sound like a man who had resolved in his mind to improve his quota and remain with the Society, rather it resonated as a party negotiating a position. From Counsel's perspective, while we are not privy to what happened in the respective meetings, between the General manager and Mr. Williamson, (the GM being no longer with the Society and no written record presented) from the evidence provided, it is clear that the separation from the Society was discussed as a viable option. After the meetings, the other Sales Representative kept their word and resigned, however, Mr. Williamson chose to remain because his word cannot be trusted. He knew he was underperforming, in that he failed to meet his monthly quotas and it was his underperformance which laid the foundation for the suggestion for separation after agreeing to separate, he reneged on his promise, causing the Society to seek to regularize the situation.

The various discussions and correspondence between the Society and Mr. Williamson, regarding his failing performance, the opportunities given to him to improve and his failure to do so, led to the justified termination of his employment.

On the other hand, Counsel appealed to the Tribunal that, if the view is to be taken that Mr. Williamson never agreed to be separated from the Society, then the state of affairs surrounding his cessation of employment should be viewed objectively and the following considerations be applied:

1. A Contract of employment is like any other contract, in the sense that it is subject to the general principles of the law of contract. This means that the parties are free to negotiate the terms and conditions that suit them, as long as they remain within the constraints imposed by the law. To this end he quoted from the cases of **Laws vs. London Chronicle (Indicator) Ltd [1959] 1Wlr 698** by Lord Evershed when he stated that:

*“since a contract of service is but an example of contracts in general, so that the general law of contract will be applicable, it follows that, if summary dismissal is claimed to be justifiable, the question must be*

*whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service” and*

Justice Kirk Anderson in **Calvin Cameron vs. Security Administration Ltd [2013] JMSC Civ 95 at paragraph 7**, where he stated that:

*“parties must be free to contract with one another, as also, subject to any contractually obligated compensation and/or penalty which may arise therefrom, to terminate their contractual obligations with anyone. The law never force parties to remain in contractual obligations to one another, if the parties do not freely choose to do so.”*

2. The fact that Mr. Williamson, when questioned on how he could improve his performance, opted for separation, is a clear indication that he no longer wished to be bound by the terms under which he was employed.
3. An objective assessment would lead to the conclusion that the dismissal was effected, not unjustifiably, but because Mr. Williamson’s attitude was the very antithesis of good employment relations. His refusal to make the relevant changes, in both his attitude towards his work as well as his performance in not reaching his monthly quotas, amounted to a repudiation of his contract of employment. The Society’s letter of dismissal was merely done in acceptance of the said breach.
4. The Labour Code provides that:

*“no worker should be dismissed for a first breach of discipline, except in the case of misconduct.”*

Further, Section 3 (5) of the Employment (Termination and Redundancy Payments) Act provides that:

*“This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason*

*of such conduct by the other party as would have enabled him so to treat it before the passing of this Act.”*

5. Neither the Labour Code nor the Act provides guidance as it relates to the kind of behaviour that will result in termination of the employment contract, without notice. The Society therefore places reliance on **Halsbury’s Law of England, Volume 16**, where at paragraph 64 it states:

*“An employer has a common law right to dismiss his employee without notice on the grounds of the employee’s serious misconduct.”*

6. Regarding what amounts to gross misconduct, reliance is placed on Lord Evershed in **Laws vs. London Chronicle (Indicator) Ltd [1959] 1 WLR 698**, which states:

*“Now the sufficiency of the justification depended upon the extent of misconduct. There is no fixed rule of law defining the degree of misconduct which will justify dismissal. Of course there may be misconduct in a servant which will not justify the determination of the contract of service by one of the parties to it against the will of the other. On the other hand, misconduct inconsistent with the fulfilment of the express or implied conditions of service will justify dismissal.”*

(Counsel’s emphasis }

7. The question that should be asked is whether Mr. Williamson’s action could be viewed as being prejudicial to the Society’s business. How long was the Society to have an employee on staff that constantly underperformed? How long should the business have an individual who would hold the business at ransom by demanding that his loans be written off in exchange for better?
8. The fact is that the Society’s revenue is dependent on the performance of the Service Representatives, consequently the actions and/or inactions of Mr. Williamson is clear evidence of conduct that can be regarded as significant

enough to cause the Society to terminate the employment relationship. Lord Maugham in **General Insurance Co. Ltd vs. Shroff (1937) 3 All ER 67** said:

*“Their Lordships have to determine ... whether the misconduct of the respondent was not such as to interfere with and to prejudice the safe and proper conduct of the business of the company, and therefore to justify immediate dismissal. It must be remembered that the test to be applied must vary with the nature of the business and the position held by the employee, and that decision in other cases are of little value.”*

9. Counsel also quoted other cases to support the Society’s position such as: The Court of Appeal in Barbados in **Hilton International (Barbados) Ltd vs. Boyce 52 WIR** and Sachs LJ in **Sinclair vs. Neighbour [1967] 2 QB 279**.
10. Mr. Williamson was well aware of the fact that reaching the monthly quotas set by the Society was important to its economic viability. The underperformance was incessant. Despite this fact, the Society did not dismiss any of the Sales Representatives. Instead they were called to a meeting in an attempt to rectify the situation. They were presented with options and after much discussion the Society questioned what it could do to assist. The only solution suggested was separation, although Mr. Williamson would want the Tribunal to believe that he was not a part of this.
11. The suggestion was proffered and the Society accepted. The acceptance was premised on the fact the employees clearly did not want to continue the employment relationship.
12. The law provides that the parties to an employment contract can mutually agree to terminate the employment relationship. Such an agreement can be effected orally or in writing. The letter of termination was merely the Society granting Mr. Williamson’s desire, his desire to be separated from the company.

Counsel further contended that, the Society noted Mr. Williamson's request for reinstatement and consequently addressed the issues of remedy, should the Tribunal so award in his favour. To this end he highlighted the powers of the Tribunal under **Section 12 (5) (c) of the Labour Relations and Industrial Disputes Act**, which provides for an order of reinstatement or compensation. He also emphasised that the Tribunal had a discretion regarding reinstatement which is flexible in nature, while making reference to the ruling in the **Jamaica Fluor Mills vs. Industrial Disputes Tribunal & Anor**, case.

He also posited that, Mr. Williamson having requested reinstatement to his previous post, the Tribunal under statutory provision is mandated to make such an award, however, reinstatement is not always practical. In this case, he advised that, trust and confidence between the Society and Mr. Williamson had broken down prior to the termination letter and as such reinstatement would be impractical. Also to be borne in mind in making a decision whether to reinstate or not, the Tribunal needs to consider that a permanent replacement has already been found. The position of Branch Manager was discontinued as the comparative size and responsibilities no longer required such an office.

Regarding compensation, the Tribunal is guided by **Section 12 (5) (c) (iii)**. It provides discretionary powers and makes provisions for compensation of a worker where the worker has been unjustly dismissed but there is no office or position existing to which he/she can be reinstated. In this case it should be remembered that Mr. Williamson gave evidence that while working as a Branch Manager, he worked in-branch and was unable to visit he designated schools and according to the evidence of the Marketing Manager, he was not making his monthly quota. Consequently any compensation should be based on basic salary only. Compensation is not unjust enrichment and bearing in mind Mr. Williamson took steps to mitigate his losses, the Tribunal should be mindful if it considers this route for its award. In this regard the Society, taking note of Mr. Williamson's employment of seventeen (17) years noted that it equates to forty one (41) weeks pay, using the redundancy payment guidelines, which it recommends be used as a benchmark, if the Tribunal is mindful to compensate him, and would not consider fifty two weeks (52) pay to be unreasonable.

**THE UNION'S CASE:**

Mr. Noel Williamson was employed to Teachers Income Protector Friendly Society on September 4, 1995, as a Service Representative for the Parishes of St. Ann, St. Mary and Trelawny. He operated in that capacity up to 2002, when he took on the added responsibility as Branch Manager, for the Ocho Rios location. In this regard he gave evidence that it was at his suggestion that consideration was given to open the Branch in Ocho Rios. He was given the task by the then CEO to find the location, after which he was asked to be the Manager. He was never given a job description but received a promotion and salary increase and operated in general as a bank manager would, being in charge of operations, business development and administration. For all intent and purposes he reported to the Marketing Manager.

As a Service Representative, he was given a target/limit which was initially set at J\$100,000.00 per month but this was revised in 1999, to J\$200,000.00, when the basic premium costs for the Society's products were increased. In this capacity he was able to achieve his limits; however with the added Branch Manager role, attaining his limits was greatly affected to the point initially, only very limited Sales Representative work was possible. Consequently, there were periods when he did not make his quota which would be reflected in the monthly survey report sent to the Marketing Manager, with the relevant explanations. Sometimes other issues such as motor vehicle problems, weather conditions, other TIP requirements and his other involvements, also impacted his work as a Service Representative.

It was the practice to hold regular monthly meetings between the Branch Managers/Service Representatives, the Marketing Manager and other Senior Managers. Evidence to this and the general types of items discussed were tendered as Exhibit #3 in minutes headed."Summary Report of Marketing Departmental Meeting held Friday January 28, 2011. He also recalled the meeting of September 20, 2011, which was called by the then General Manager with members of the Marketing Department, the Chairman

of the Personnel Committee and the Branch Managers/Sales Representatives and Service Representatives.

The meeting was mainly to deal with concerns expressed at an earlier meeting in the month, by the Marketing & Sales team. The meeting was led by the General Manager and each member of the Sales Team was asked to express their concerns. Notes of the meeting advised to have been recorded by the Marketing Manager, were tendered as Exhibit # 1, and while in his view it captured the overall essence of the proceedings, Mr. Williamson disagreed with certain areas. He claimed that he spoke much more at the meeting than what was recorded, because the recorder was distracted by activities on her Blackberry telephone and had to be called to attention from time to time. His expression about the Society writing off his loans was no indication that he wished to discontinue his employment. The meeting ended without any decisions being taken and on the understanding that the General Manager would meet with each individual Service Representative thereafter regarding, the way forward.

He was the President of the Staff Association from its inception as also Chief Delegate of the UAWU bargaining Unit from 2005, up to the time of his dismissal. The Society was fully aware that he held those positions.

Mr. Williamson gave evidence that on February, 21, 2012, he was called to the office of the General Manager and handed a letter and asked to read it. He complied and having observed its contents, he enquired if his union was advised. He testified that the General Manager told him that he does not need to tell any union when he intends to dismiss someone. The letter, headed **“Re: Termination of Employment,”** tendered as Exhibit v, in paragraphs 1 – 3 advised as follows:

*“As you are aware the Society has communicated with you, as far back as 2007, that your production has declined drastically.*

*We refer to our letters to you dated February 28, 2008, January 2, 2009 and most recently April 12, 2011 and the recommendations therein. We have noted, based on the Monthly Production Survey, that there has been no improvement.*

*Unfortunately, we are left with no alternative than to terminate your employment with us, effective immediately.”*

He had had one week's notice of the meeting but not what it was about. The Marketing Manager had told him it was to be a meeting with the Agents but she did not know what about. He received no written charges before, he had no hearing neither was he aware of any performance problems prior to that meeting. With reference to the letter of termination, he said that he received no formal communication, written or otherwise. All the other correspondence referred to in the letter was never received. In fact, he was very surprised, as when he compared the date of 2007, referred to in the letter, he thought it was an error, since that year was seen as a good one for him as borne out by letter dated January 10, 2008, tendered as Exhibit #14. That letter was one of congratulations and rewarding him with a prize of \$5, 000. 00 as ***“Service Representative of the Year - Third Prize”*** for the year ending December 31, 2007. Also tendered in support of his good performance as a Service Representative, was a letter dated April 12, 2011, tendered as Exhibit #4, which reminded him that the monthly quota was J\$200,000, the dates for submission of the monthly reports but most importantly commended his performance results as: ***“above the standard productivity requirement” “Your effort to achieve your quota is highly recognised. Keep up the good work.”***

The Union on behalf of Mr. Williamson contends that the dispute is not a case about whether or not he performed his job according to the standards required by him, having his loans written off or demanding to be separated from the company. It is neither due to habitual under-performance nor about any failure on the part of Mr. Williamson. Instead, it is a case about industrial injustice; injustice dispensed by a company which dispenses injustice and fails to do what the labour laws dictate that it should do. Failing to recognize the rights of Mr. Williamson, treating him with disrespect, as also to the Union

that represents him, which are codified under the Labour Relations Code (LRC). The Society is operated by persons who continuously disrespect industrial relations norms.

In the above regard, it further contended, that Mr. Williamson was unjustifiably dismissed, notwithstanding the Society's claims that he reneged on an agreement to resign if his performance did not improve. The facts are that he was not granted a hearing, his right to representation was ignored and he was not granted such right. Furthermore, the Society failed to respect the fact that Mr. Williamson was the Union's Chief Delegate and as such it flouted the provisions of the LRC with regards to how delegates should be treated in matters of discipline.

In conclusion the Union strongly posited that Mr. Williamson's dismissal was unfounded and revolved around:

- He is a Jamaican and worker, as defined in the Labour Relations and Industrial Disputes Act (LRIDA).  
*As such he has the right to due process generally and to a hearing, as well as representation in any matter, never mind a matter which is disciplinary in nature, which is a requirement of the LRC.*
- Mr. Williamson had a right to challenge any charge made against him and to put forward a defence.
- Mr. Williamson was also the Union's Chief Delegate and as such would have also been due certain special considerations under the LRC.
- He was dismissed without a hearing, without being afforded representation and without his Union even being informed that the Chief Delegate had been dismissed.

Consequently, in light of the above failings it is a clear case of unjustified dismissal.

Mr. Williamson gave evidence that as a commissioned worker he would from time to time earn more as a Service Representative and as such he was more inclined to work in that position than what he earned as a basic salary as a Manager. He gave examples of his developmental work to the benefit of the Society, e. g. the Student/College Plan and the New Principal Cocktail Programme.

Based on his own efforts from commencement, using public transportation and armed only with an attaché case and trekking across the island gaining business for TIP, he now feels he was unfairly treated, when things were getting better. He would like to be reinstated so that he can carry on his good work and to assist TIP to acquire its fair share of the market.

Since his dismissal he has sought employment, which he achieved for a brief period of three months, (April-July, 2013) at a rate of \$70,000.00 per month, as a Marketing Supervisor. He resigned as he was being asked to relocate and that would incur additional expenses for rent, utilities and food, which the salary could not adequately cover. After that he started his own business in the field of steam cleaning & sanitation for which he has received “couple contracts” but to date he has not been able to earn enough to make any worthwhile living. Returns advised to be at \$40, 000. 00 per month.

**TRIBUNAL’S FINDINGS:**

Both parties provided the Tribunal with copious and cogent references to support the evidence presented.

In the case of the Society, we find that the basis for the dismissal of Mr. Williamson was not made clear as reference was made to him reneging on a agreement to resign if his performance did not improve. In this regard while the notes of the meeting called by the General Manager, on September 20, 2011, make reference to at the end of the meeting, the officers shaking hands in agreement that they would meet with him individually as it relates to the negotiation of separation, no evidence was brought to support that such a

meeting took place. In fact when Mr. Williamson indicated that he had no such meeting, it went unchallenged.

On the other hand the letter of termination, dated February 21, 2012, refers to declining production and despite referenced correspondence ending with that of April 12, 2011, there had been no improvement. No evidence of the referenced correspondence was presented to the Tribunal and even when receipt was denied by Mr. Williamson, no proof of the correspondence was tendered. Instead the Union Officer tendered correspondence of commendation to Mr. Williamson's service performance, from the Society, within the timeframes of those referred to, i.e. January 10, 2008 and April 12, 2011.

The Society, despite the provisions of its own Code of Ethics/Conduct and its expressed knowledge of the Labour Relations Code, failed to be guided by any of those relevant provisions in dealing with Mr. Williamson's dismissal. In fact while the then General Manager, was not called to give evidence, when Mr. Williamson mentioned that he had told him that he did not need to speak to any union when he is going to dismiss anyone, there was no challenge.

Apart from the information provided in the letter of termination, no evidence of reprimand, discussions or warning between the Management of the Society and Mr. Williamson, was tendered by the Society and although both the Chairman of the Marketing Committee and the Marketing Manager allude to under performance amongst the Service Representatives, no specific indications of failings by Mr. Williamson was identified. The evidence referred to general meetings in which wide ranges of issues and concerns were discussed.

In the case of the representation by the Union on behalf of Mr. Williamson, we agree that no case of poor performance by him was established by the Society. The Society failed to have mentioned about his work as a Branch Manager and the impact this must have had on his ability to optimise his service quota while attending to the establishing of a new branch.

We accept fully that the Society failed to engage the procedural requirements set out under the Labour Relations Code, particularly Section 22 and including special treatment denoted to dealing with delegates and the Union. The denial of Mr. Williamson's rights as a worker to natural justice appeared blatant and the Society is being encouraged to revisit its practices in this regard.

Overall, based on the evidence provided and the abovementioned failings of the Society, we have no other course than to find that Mr. Williamson was unjustifiably dismissed. In this regard he has requested reinstatement without any loss of income/benefits, while admitting that limited mitigation has taken place. The Tribunal therefore, taking into account Mr. Williamson's seventeen (17) years of sterling and unblemished contributions to the Society, awards as follows.

**AWARD:**

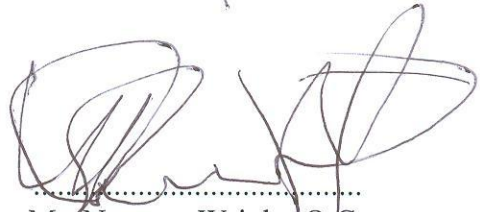
The Tribunal awards that the termination of the contract of employment of Mr. Noel Williamson is unjustifiable and that in accordance with Section 12 (5) (iii) of the Labour Relations and Industrial Disputes Act (1975), **orders** that Teachers Income Protector Friendly Society:

- a. reinstate Mr. Williamson in his employment on or before January 11, 2016 with payment of twenty four (24) months' salary at the current rate for the position Branch Manager/Service Representative he held at the time the contract of employment was terminated on February 21, 2012.

Or

- b. failure to act in accordance with (a) pay him Compensation with a sum being the equivalent of three (3) years' salary at the current rate for the position he held at the time the contract of employment was terminated, as full and final relief.

DATED THIS 18<sup>th</sup> DAY OF DECEMBER 2015.



.....  
Mr. Norman Wright, Q.C  
Chairman

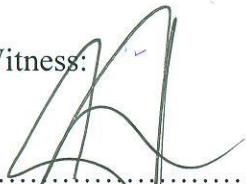


.....  
Mr. Rion Hall  
Member



.....  
Mr. D. Trevor McNish  
Member

Witness:



.....  
Gary Lediard  
Assistant Secretary