INDUSTRIAL DISPUTES TRIBUNAL
Dispute No: IDT 62/2017

SETTLEMENT OF DISPUTE

BETWEEN

TRYALL GOLF AND BEACH CLUB LIMITED

AND

MR. CLINTON CALLAM

AWARD

I.D.T. DIVISION

MISS MARSHA SMITH - CHAIRMAN

MRS. JACQUELINE IRONS, JP - MEMBER

MRS. CHELSIE SHELLIE VERNON- MEMBER

AUGUST 13, 2020



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IDT 62/2017

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

TRYALL GOLF AND BEACH CLUB LIMITED
(THE COMPANY)

AND

MR. CLINTON CALLAM
(THE AGGRIEVED)

REFERENCE:

By letter dated November 15, 2017 the Honourable Minister of Labour and Social Security in accordance with Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein: -

The Terms of Reference were as follows:

> ***"To determine and settle the dispute between Mr. Clinton Callam on the one hand, and the Tryall Club on the other hand, over the termination of his contract of employment."***

By letter dated July 17, 2018, the Ministry amended the Terms of Reference to read as follows:

> ***"To determine and settle the dispute between Tryall Golf and Beach Club Limited on the one hand and Mr. Clinton Callam 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 and which dealt with the matter comprised:

Miss Marsha Smith	-	Chairman
Mrs. Jacqueline Irons, J.P.	-	Member, Section 8(2) (c) (ii)
Mrs. Chelsie Shellie-Vernon	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Ms. Angela Robertson	-	Attorney-at-Law

In attendance was:

Mrs. Dawn Gordon	-	Director, Human Resources

The **Aggrieved Worker** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant

In attendance was:

Mr. Clinton Callam	-	Aggrieved Worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during ten (10) sittings held between July 6, 2018 and May 15, 2019.

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

Mr. Dwight Nelson, OD,CD, JP	-	Chairman
Mrs. Jacqueline Irons	-	Member, Section 8(2) (c) (ii)
Mrs. Chelsie Shellie-Vernon	-	Member, Section 8(2) (c) (iii)

However, after the eighth sitting of the Tribunal, Mr. Nelson died, and the parties agreed in writing to the appointment of Miss Marsha Smith as Chairman of the division to complete the

hearing and determination of this matter. This was in keeping with the provisions of Section 8(4) of the Labour Relations and Industrial Disputes Act of 1975 which states as follows:

> *(4) 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*

BACKGROUND TO THE DISPUTE:

The Tryall Golf and Beach Club Limited (*hereinafter referred to as the Company*) is a private members club located at Sandy Bay in the parish of Saint Ann. Mr. Clinton Callam *(hereinafter referred to as the Aggrieved Worker)* was employed to the Company as Chief Accountant on a two-year contract commencing on September 1, 2015. By way of letter dated May 9, 2016, the employment of the Aggrieved Worker was terminated . The letter is set out below:-



"*May 9, 2016*

Mr. Clinton Callam

Main St.

Hopewell P.O.

Hanover

Dear Mr. Callam,

This serves to advise you that your contract for the period of two (2) years dated August 31, 2015 will end on May 31, 2016. We would like to thank you for your years of contribution to the Club as you have been a pillar and backbone of this noble Club and have contributed greatly to its success.

We would also like to thank you for your assistance with training of your successor to the Chief Accountant post, Mr. Oniel Armstrong. Unfortunately, the Club is not in a position

to continue to pay two salaries for the post since we have been doing so for the past five (5) months.

We wish to advise that from time to time we may require your services at the Club on a contractual basis and hope that you will be inclined to continue to make yourself available when the need arises. The termination clause within your contract allows for two (2) weeks' notice of intent but please note that although you are served with a notice letter, you will be paid a full month's salary for May.

Please be mindful that you are required to return all property belonging to the Club including identification Card, Keys and any other property of the Club. Please be mindful of the provision to continue your personal Health Coverage until age 75 as per Retirement Policy, please advise us how you will make these monthly payments to continue said coverage. Your final payment will be processed in May payroll as follows:

- *Payment to May 31, 2015*
- *Vacation leave outstanding 10 days*

Again thank you for your services with us and we wish you all the best in your future endeavours.



Yours sincerely
Dawn Gordon
Human Resources Director

C: Patricia Henry – Chief Financial Officer"

Mr. Clinton Callum protested his termination and sought the assistance and intervention of the Ministry of Labour and Social Security in the dispute between himself and the Company. No resolution was reached, and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

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THE COMPANY'S CASE:

1. The Company's first witness was Mrs. Dawn Gordon, Director, Human Resources since October 5, 2015. She stated in examination in chief that she was familiar with the issues involving the Aggrieved Worker. When she came on board, the Aggrieved Worker had just entered his retirement. There was a letter dated July 31, 2015, signed by her predecessor, Mrs. Angeline Anderson indicating that there would be some succession planning. The Aggrieved Worker held a very critical position in the club with combined 37 years' service. The club is unique in its operation. It has approximately 90 villas. The Aggrieved Worker dealt directly with the homeowners, their different companies and there was a wealth of knowledge that he would have had during the period of his employment. In employing someone who would be the Aggrieved Worker's successor, some in-depth training and transferring of as much knowledge was required. It was against that background that the entire process happened.

2. She had discussions with the Managing Director and the Chief Financial Officer about a recruitment. The Company knew that the person chosen to replace him would have to be able to understand the dynamics and the Company was not sure how long the process would take. The Company wanted to make sure that the person who was chosen would get as much in with the Aggrieved Worker's training and guidance. The Company relied heavily on the Aggrieved Worker for that. When she joined the Company in October 2015 it was one of the first situations she had to deal with during her trimester. She would have to recruit and ensure that the person was adequately trained. This was brought to her attention by the Managing Director. One of the discussions the Company had was that the Aggrieved Worker's department head would meet with him and explain to him how the Company was relying on him to assist with the planning. That ensued and the Company advertised for the position, vetted for the position, interviewed persons and a selection was made.

3. The Aggrieved Worker assisted the Company throughout. The Aggrieved Worker trained this individual. At the end of three months when the Company assessed the individual and asked for feedback, the Aggrieved Worker's feedback was that the gentleman needed some more time. When the extension was asked for, the Company gave it. Eventually the

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individual's probation was signed off on. There was an evaluation assessing him as ready for that position. The Aggrieved Worker also signed off on that.

4. She said the Company provided all the retirement benefits set out in the July 31, 2015 letter. The Aggrieved Worker was a part of the pension scheme and he was also a trustee of the pension scheme. Having taken over from Mrs. Anderson, she reached out to her to find out from her the nature of the discussion she had with the Aggrieved Worker and if she remembered discussing with him the entire retirement and his going off and any content she may have discussed with him that could have assisted her in dealing with the matter. Mrs. Anderson's response was that she did not remember.

5. She signed the termination letter and copied it to Patricia Henry, the Chief Financial Officer, who was the person that the Aggrieved Worker reported to directly. The Company felt that the Aggrieved Worker had vast knowledge and from time to time there are excessive periods when it is very critical in balancing the accounts for the homeowners. The Company knew it would need him to come in from time to time, notwithstanding the fact that they would not be able to maintain him full time, to pay both him and his successor simultaneously. It was against that background that the Company wanted to allow him to come in and continue to contribute to the club. In formulating the letter, the Company wanted him to understand that they were not discarding him. There was value to him still. They wanted to be very open where they could call on him when they needed him.

6. She was asked if she was ever told why the Company entered a two-year contract. She answered that it was explained to her that because of the nature of the work and the importance of the job, the Company was not clear as to how quick they would be able to follow through on the recruitment. The length of time could not be established. The situation at the club is that the homeowners are very demanding. The Company did not want a situation where they did not have adequate coverage to ensure that all of that took place and so it was very important that they insert that termination clause. It would allow for most of the activity to take place and then the Company could exercise that right within the clause that existed within the contract. It was the Aggrieved Worker who indicated that his successor, Mr. Armstrong was ready and able to take over his job functions.

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7. During that time, she was at the Company, she was unaware of any disciplinary or performance issues the Company may have had with the Aggrieved Worker. Training was one of the functions set out in his job description and therefore asking the Aggrieved Worker to remain on a contract to train his successor would not be unusual.

8. During Cross-examination she said that she received an email dated March 27, 2017 appealing the termination of the Aggrieved Worker. She agreed the letter dated July 31, 2015 did not mention beyond August 2015. She agreed that there was no reference to the succession planning in the August 31, 2015 contract. She said she was not there when the contract was presented to the Aggrieved Worker, but when she came on board, she had discussions with him about it. The discussions surrounded his retirement and replacement and not necessarily the details of the contract. She said the possibility existed for his contract to be further renewed. She understood the purpose of an appeal. The Aggrieved Worker did not sign any variation to the contract subsequent to him signing it. When the decision was taken to terminate the Aggrieved Worker's contract, it was discussed with him. She was not a part of the discussions regarding the two-year fixed term contract and the issue of succession planning as she was not at the Company at that time.

9. When she was re-examined, she said that she did not at any time make any adjustment to the contract in writing that indicated that there would have been an extension of the contract beyond the period of 2017. She said the contract was terminated with notice.

10. Mr. Aram Georg Zerumin, Managing Director of the Company was the second witness for the Company. In examination in chief he stated that he had been employed to the Company since February 10, 2015. He gave a history of the formation of the Company and was familiar with the Aggrieved Worker. When he started working at the Company, the Aggrieved Worker held the position as Chief Accountant. He was aware that the Aggrieved Worker was due to retire. Leading up to the Aggrieved Worker's retirement, he recalled having at least three meetings with the Director of HR as well as with other persons and the Aggrieved Worker where they discussed the Aggrieved Worker's plans for retirement and also having a succession plan in place not specifically only to the Aggrieved Worker's retirement but also in general succession planning for the entire business in general.

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11. Regarding the Aggrieved Worker they had two meetings to see how best they could implement a succession planning because the Aggrieved Worker had a vast amount of knowledge. First of all they started with the issue of retirement and they discussed the issue of having a contract with the Aggrieved Worker until they were able to find a suitable person and to make sure that the person had the knowledge and skills before handing over to that person that aspect of the operation. The Aggrieved Worker was a part of the process of training. The two-year contract dated Aug 31, 2015 signed by the Aggrieved Worker was subsequent to his retirement. The Aggrieved Worker accepted and signed the contract. He was also shown the Aggrieved Worker's letter of retirement dated July 31, 2015. This letter stated in part "***your Department head will be making the necessary arrangements for a succession plan to facilitate the smooth transition of such a key position with the club.***" He said that that sentence in the July 31, 2015 letter was in accordance with the discussions he had had with his executives and the succession plan as it related to the Aggrieved Worker.
12. The Aggrieved Worker was involved in the interview and choice of his successor. The Company started advertising for the position in and around November 2015. The interview process started towards the end of November going into December. He along with the HR officer, the Director of HR, the Deputy Chief Accountant, and the Aggrieved Worker were a part of the interview process. The Aggrieved Worker taught the incoming applicant the day-to-day responsibilities that the Aggrieved Worker was carrying out. The Aggrieved Worker maintained the same remuneration and benefits. There is a standard three-month probationary period for all employees. The immediate supervisor or manager evaluates the individual based on their performance after the three months probationary period. He recalled that the Chief Financial Officer told him neither she nor the Aggrieved Worker were happy with the person that was recruited. The Aggrieved Worker requested an additional month of training to accomplish what he wanted and to explain the operations of the main office. The Company granted the extension. It was agreed that the person would have an extended probationary period. The Company was confident that with the Aggrieved Worker's skills that he would inform the Company of the time when the gentleman was ready to assume full responsibility and to confirm him in the position.

13. The person trained and appointed in the position of Chief Accountant was Mr. Oniel Armstrong. When Mr. Armstrong was confirmed in the position, he received the payments and benefits as Chief Accountant. On the confirmation there were two persons receiving the payments and benefits of Chief Accountant. The termination letter basically stated that they were terminating the contract based on the termination clause that was outlined in the contract and the Company thanked the Aggrieved Worker for his years of service and the Company also offered him future opportunities at the Company because there were a couple of 'crunch time" at the end of the year when the Company needed help with the budget process for audit and would need additional persons and the Company hoped that when it needed help it could call on the Aggrieved Worker as required. The letter also thanked the Aggrieved Worker for training Mr. Armstrong and handing over smoothly.
14. When the Aggrieved Worker was offered the contract dated August 31 ,2015 from the management's point of view it was very difficult to determine how long it would take them to find a suitable replacement, and it was also very difficult for them to determine how long it would take to actually train that person and to bring them as close as possible to the level of the Aggrieved Worker. The contract was charted with that in mind. The Company hoped it would find somebody within the two years or even shorter. It was difficult to determine. The succession planning discussions was held with the Chief Financial Officer and the then Director of HR. Those persons were intimately involved in the process and he kept the follow up meetings and kept up to date on the process, where they were in the process and whether they had advanced or not. He said the Aggrieved Worker was aware of the reason for the contract and what would have been required.
15. During cross examination he said there was no reference in the August 31, 2015 contract to succession planning. He said the letter of July 31, 2015, mentioned succession planning. He did not draft either document, it was the Company's team and counsel. The Aggrieved Worker was not a part of the discussions the Company was having. To the best of his understanding the Company had a conversation with him. The succession planning was not in the August 31, 2015 letter but the Company did make reference to it. It was a part of the discussions with HR and the Aggrieved Worker. The due date for retirement was extended up to August 31.

16. The succession planning was extended for three months. The Company did not start advertising for the position until November. On the Aggrieved Worker's anniversary, the Company wrote him a letter to say his retirement should have been in April 2015 and that they were extending it for three months. It is a part of the policy when retiring key players like the Aggrieved Worker to have a strategy in place. The Company started the process of how or what are the next steps. When August 31, 2015 came the Aggrieved Worker was involved in all the procedures of succession planning. No arrangement was made for the Aggrieved Worker other than the contract itself. The Aggrieved Worker was not offered future services based on where the situation is now. The Company did not amend the contract nor did it ask the Aggrieved Worker to sign any amendment. The contract lasted nine months. The Company exercised its right to terminate the contract. He was not aware of discussions between the Aggrieved Worker and Mrs. Angeline Anderson that the Aggrieved Worker would be offered another two-year fixed term contract.
17. During re-examination he stated that there were a couple times or a few times when the Company would have crunch situations in the Accounts Department, one of which is the Annual Audit and when they were putting the budget together. Those are two of the circumstances where the Company would have hoped the Aggrieved Worker could come in and share his expertise. He repeated that he was unaware of the then HR Director Mrs. Angeline Anderson, offering the Aggrieved Worker a further two-year contract. From his experience, why would the Company at the beginning of the contract start talking about another contract at the commencement of the contract. It just did not make any sense. If the Aggrieved Worker were offered a further two-year contract, he as Managing Director would have been aware of that. He did not give sanction for the Aggrieved Worker to be offered a further two-year contract. The Aggrieved Worker's retirement was effective August 31, 2015. The two-year contract was dated August 31, 2015.

THE COMPANY'S CONTENTIONS:

1. The Aggrieved Worker's claim that his dismissal was unjustifiable is untenable based on the fact that :

(i) he was engaged on a fixed term contract for a fixed period terminable by notice;

(ii) the purpose for which he was contracted was satisfied;

(iii) he was not summarily dismissed;

(iv) both the Labour Relations and Industrial Disputes Act and the Labour Relations Code would not apply in these circumstances.

2. The Company had no issues with the Aggrieved Worker's performance; it had no reason to apply any disciplinary sanction to anything he had done. The Contract was terminated solely on the basis that the reason for which the Contract had been issued had come to an end. In these circumstances the provisions in Section 22 of the Code would not be applicable. The only applicable terms would be those set out in the Contract and no other.
3. Should the Tribunal consider the award of compensation, it has no authority to consider any period of time in excess of the period between the termination of the Aggrieved Worker's contract of employment and the expiry of same. Further the Aggrieved Worker had a legal obligation to mitigate his losses.

THE AGGRIEVED WORKER'S CASE:

1. He testified in examination in chief that he worked at the Company for over 37 years. His last position was that of Chief Accountant. In his view he had a good track record with the Company. He turned 65 in 2015. He was called in by Mrs Angeline Anderson to say he was now 65 and due retirement. A letter was given to him on August 11, 2015 at about 6:00 p.m. . He was not aware of a retirement policy at the Company until he got the letter. He did not receive any correspondence after that letter.
2. He had never been through a system of succession plan. Nobody said anything to him regarding a succession plan. He did not know what it entailed. He had never received any formal notes on what was in store for him. He was not informed of the succession plan. He had nothing in writing, and nobody said anything to him. Later in August 2015 he was given a contract for two years which he received on September 1, 2015. There was no mention in the contract about succession planning. Succession planning was not discussed with him with regard to the two-year contract.

3. He said he did not get a chance to serve his two-year fixed term contract. On May 29, 2016 he finished offloading three containers at an area known as the Barn, with the assistance of the Assistant Chief Financial Officer Aisha Johnson and his Assistant Oniel Armstrong. At about 12:00 noon he collected his lunch and went home to have a shower and get fresh clothes, as his clothes were dirty. While at home, the present HR director, Mrs. Dawn Gordon called and asked him about his whereabouts. He told her he was at home having a clothes change and having his lunch and then to resume his duties at the office. Mrs. Gordon told him he would have a lot more time to have lunch with his wife and he was to report to her office as soon as he got back. It was Friday, May 29 at about 2:00 pm when he reported to Mrs. Gordon's office. Miss Gordon said to him that he was not on the job and off property. She said she and Miss Patricia Henry had been looking for him all morning. A seat was offered to him and Mrs. Gordon opened a letter and read to him. She asked if he had any questions and he said no. The letter she read was his termination letter. He took the letter and went back to his office. He spoke with the Assistant Chief Financial Officer, Aisha Johnson and showed her the letter. He did not go back to work the following day as it would have been a Saturday. He did not resume duties again. He drafted a letter two weeks later to the Ministry of Labour outlining the whole scenario of his employment and termination. He reported the matter to the Ministry of Labour in Lucea, Hanover.
4. He had the discussions between himself and Mrs Anderson at which no one else was present. From April 2015 up to August 2015 he was in no discussions that talked about his retirement. Mrs Anderson did not indicate to him that Mr. Zerumin was a part of the discussions regarding the two-year contract that he got. He denied that after the expiration of Mr. Armstrong's probation he recommended that Mr. Armstrong serve an additional month.
5. He was asked to evaluate Mr. Armstrong by the Chief Financial Officer, Patricia Henry. Ms. Henry is his supervisor and he takes instructions from her. He could not have refused from evaluating Mr. Armstrong. He said on the day he got the termination letter, Mrs Gordon said he was not on property. He was not brought in meeting about it. He said the Company removed the health insurance coverage for his wife and the removal of the coverage was a breach of contract. His understanding was the contract would have been

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maintained to the end of its expiration. The contract was not maintained based on the letter of termination. He did not agree to have any variation of the contract. He was promised another two-year fixed term contract beyond 2017. He was more than happy to go back to the Company to work. His termination affected him badly. His dream was to stay with the Company as duly promised that he would be there a long time, even on a temporary basis, two or three times per week, until he chose to retire. He said he had not chosen to retire.

6. During cross-examination he agreed that he was paid a retirement benefit. He also agreed that in 1999 the Company made him redundant when all the club's employees were made redundant and that thereafter he started a new employment period. He agreed that he benefitted from the Company's pension scheme. He agreed that the letter of July 31, 2015 made it clear he was due to retire in April 2015 and that the Company was prepared to extend the retirement to August 31, 2015. He agreed there was nothing in the letter of July 31, 2015 that indicated that the succession plan would be deferred to a later date. He also agreed that there was nothing in that letter that suggested that he would have a period of employment going to 2019.
7. He agreed that he got a letter dated August 31, 2015 and that the letter stated that the period of employment would commence on September 1, 2015 and end August 31, 2017 subject to earlier termination provided in the agreement. He admitted that he did not see anything in the letter that the parties could do a further renewal of the contract. It was pointed out to him that the clause in the contract which related to the health insurance scheme indicated that any dependent coverage would be borne solely by him and he agreed that the contract stated so. He disagreed that he was paid in lieu of notice of four weeks. He agreed he was paid for the full month of May. He insisted that prior to August 31, 2015, Mrs. Anderson promised him that he would work the full contract period and that the Company would give him a contract for two more years and that if he were able to , he would work for the Company from time to time.
8. He was not aware of the retirement policy prior to the one that was written in 2015. Somewhere in August 2015 the Managing Director put the retirement policy and other documents in place. That policy stated that the retirement age for males would be 65 and for females 60 to 65. He was made aware of this policy in August 2015. He was aware

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that on attaining 65 years, that he would need to retire based on the new policy in place. He received the letter of July 31, 2015, from Mrs Anderson indicating but he was due to retire in April.

9. He agreed that the letter of July 31, 2015, spoke of the benefits he would get pursuant to retirement and that he was paid pursuant to the letter of retirement. All the retirement benefits due to him were paid. He agreed that the letter from Mrs Anderson clearly stated ***"your department head will be making the necessary arrangements for a succession plan to facilitate the smooth transition of such a key position with the club"***. He said pursuant to the letter of July 31, 2015, he was issued a fixed term contract. When he worked with the Company prior to his retirement he worked under an open-ended contract.

10. He was familiar with Mr. Oneil Armstrong. Mr. Armstrong was placed in his office as an accountant trainee. He was told to let Mr. Armstrong sit in his office and understudy what he was doing. Based on the instructions he received he had to allow Mr. Armstrong to understudy what he was doing. He did an appraisal for Mr. Armstrong. The appraisal form was called Probation Evaluation Review for Oneil Armstrong. The document said the job title was Chief Accountant. The date of hire was January 4th, 2016 and the date of appraisal was the 4th of April 2016. He agreed that he completed everything on the appraisal form above the performance plan section. He agreed that based on what was in the document it would have been a very good performance for an employee who had just been employed for four months. He agreed that Mr. Armstrong's job title was Chief Accountant.

11. He worked at the Club Mondays to Fridays 8:30 a.m. to 5:30 p.m. It was put to him that his letter dated June 15, 2016, which stated *"**On May 29 while doing my duties, I was called in by HR Dawn Gordon and given a letter which states that my fixed term contract for two years was terminated May 31, 2016"*** was not true, as May 29, 2016 was a Sunday and not a work day. He replied that his typing was done as receiving the letter on Friday. It was put to him that the evidence that he gave about what happened on May 29, was not true, as May 29, was not a day of work. He responded that May 29 was an error on his part but insisted that Miss Gordon read the termination letter to him and gave him a copy. He denied that Mrs Gordon spoke to him and meet with him on Friday May

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13, 2016 at 3:30 p.m. He was shown Mrs Gordon's calendar for May 13, 2016. He noted that were three areas on the calendar for May 13 and that all three had his name with a commencement at 3:30 and a finish time for 4:00 pm. He agreed that according to the printout the meeting that he was referred to as happening on May 29, 2016, in fact happened on May 13, 2016.

12. It was put to him that there was nothing in the contract which gave a promise of a contract beyond the expiration of 2017. He responded that it was not written there. He agreed that the contract stated it was for two years subject however to earlier termination as provided in the agreement and that the contract could be brought to an end before August 31, 2017. He agreed that page 2 of the contract under the rubric "Termination with Notice" allowed for either party to bring the contract to an end with notice before August 31, 2017. He also agreed that the contract also allowed for termination of employment without notice if certain breaches were committed and that would be before August 31, 2017.
13. He agreed that his earlier evidence that he had an unblemished record was not wholly accurate. He agreed that by way of letter of June 2, 2016 he indicated he accepted the Company's offer to remain on the post-retirement health insurance scheme. He also agreed that his wife continued on the plan with him making full payment for both himself and his wife. He also agreed there was no obligation for the Company to include his wife on the policy, it was his obligation.
14. He said based on the fact that it was mentioned to him that there would be a succession plan for him to train somebody to take over his position he could agree that a plan was supposed to be in place, but up to present it was not done. He said he was told verbally that Mr. Armstrong was in a succession plan to his post. He agreed that he trained him.
15. During reexamination he stated that he did not recall meeting with Mrs Gordon on May 13, 2016. He should have put May 27 instead of May 29 in the letter.

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THE AGGRIEVED WORKER'S CONTENTIONS:

1. No succession plan was presented to or discussed with the Aggrieved Worker.
2. The Aggrieved Worker was terminated for cause. The Company is saying that they cannot pay two persons to do the same work. The Aggrieved Worker was employed before Mr. Armstrong and he was still able to perform his duties.
3. He had the right to appeal the decision, but no appeal was granted.
4. The one day's notice given was not adequate. He was entitled to two weeks' notice in writing payment in lieu. The letter of May 9th, 2016 was not given to him until May 27th, 2016.
5. He was paid the salary for May 2016 but no notice pay. He was not paid meal allowance, laundry allowance and traveling allowance. He was only paid for the month of May and outstanding vacation leave.
6. The Aggrieved Worker is claiming the unexpired portion of his contract being 15 months and two additional years as promised by the Company as reasonable expectation.

THE TRIBUNAL'S FINDINGS & RESPONSE:

1. The Aggrieved Worker retired on August 31, 2015.
2. By way of letter dated July 31, 2015, the Company advised the Aggrieved Worker of his retirement and indicated that arrangements would be made for succession plan. The July 31, 2015 letter established the necessity for a succession plan to facilitate the smooth transition of his position.
3. Prior to his retirement, the Company discussed with the Aggrieved Worker the need to have him assist with the succession planning in order to provide sufficient time for the transfer of his knowledge to a suitable successor.
4. On August 31, 2015, the Company offered, and the Aggrieved Worker accepted the employment as Chief Accountant for two-year fixed term contract commencing on September 1, 2015 and ending Aug 31, 2017. This contract was subject to earlier termination as provided in the agreement. The Company did not offer the Aggrieved Worker any contract of employment beyond this contract.

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5. The Aggrieved Worker was a part of the recruitment, interview, and selection process of his successor. This process was between November-December 2015.
6. On January 4, 2016, the Company hired Mr. Oniel Armstrong as Chief Accountant. Mr. Armstrong was subject to a probationary period, during which time he was supervised and trained by the Aggrieved Worker. On April 29, 2016, a Probation Evaluation/Review was done for Mr. Armstrong. The sections of the review form were completed and signed by the Aggrieved Worker. On completion of the evaluation, Mr. Armstrong was confirmed as Chief Accountant.
7. By way of letter dated May 9, 2016, the Aggrieved Worker's contract of employment was terminated by the Company on the basis that the Company was not in a position to pay two salaries for the same post.
8. The contract of termination was not terminated for disciplinary reasons and therefore Section 22 of the Labour Relations Code is not applicable.
9. The Company and the Aggrieved Worker presented divergent cases as it relates to when the letter of termination was delivered. The Company's case is that the HR Director met with the Aggrieved Worker on May 13, 2016 and delivered the letter in that meeting. A hard copy of the electronic calendar for the HR Director for that day was tendered in evidence to confirm the meeting. The Aggrieved Worker's case is that on May 29, 2015, he was called to HR and given a letter that his contract was terminated May 31, 2015. On a balance of probability, the Tribunal finds that the Company's evidence as relates to when the termination letter was delivered to be more credible. The Aggrieved Worker's version as to the date of delivery changed. He wrote a letter dated June 15, 2016, which stated that the delivery of the letter of May 29, 2016. When he was challenged on that date being a Sunday, he changed the date to May 27, 2016. His explanation for the discrepancy was not credible and there the Tribunal finds that his evidence as it relates to the delivery of the termination letter to be discredited.
10. Notwithstanding, we find that the Aggrieved Worker's evidence is discredited as it relates to the date of the delivery of the termination letter, the Tribunal finds that the procedure that the Company followed which culminated in the termination of the Aggrieved Worker's employment for was unfair.

INDUSTRIAL DISPUTES TRIBUNAL JAMAICA

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11. The Court of Appeal in the case of Village Resorts Ltd v The Industrial Disputes Tribunal & Uton Green representing the Grand Lido Negril Staff Association (1988 35 JLR 292) approved the view that person's job is no longer a purely contractual right terminable by the appropriate contractual notice. The process that leads to a dismissal must be fair.
12. Section 5 of the Labour Relations Code states that good management practices and industrial relations policies must be one of management's major objectives. Section 19 of the Labour Relations Code places an obligation on the employer to communicate matters of interest as it relates to the operation and future prospects of the undertaking especially as they affect the worker and also to take the initiative in establishing and regularizing consultative arrangements. There was no evidence led by the Company that there was effective communication and/or consultation with the Aggrieved Worker regarding the following prior to the delivery of the letter of termination:
    (i) The succession plan for the Aggrieved Worker's position would come to an end with the confirmation of his successor.
    (ii) The completion of the training of the Aggrieved Worker's successor would likely trigger the ending of his contract of employment.
    (iii) The fact that the Company was not in a position to continue to pay two salaries for the same post.
13. The termination letter cannot take place of the employer's duty to communicate and consult. These actions must be taken prior to the decision to terminate. The reasons stated above, Tribunal finds that the termination of the Aggrieved Worker's contract of employment was in breach of the Labour Relations Code and therefore unjustifiable.

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AWARD:

In accordance with Section 12 of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Mr. Clinton Callam was unjustifiably dismissed and he is to be paid twelve (12) months basic salary.

DATED THIS 13th **DAY OF AUGUST 2020**

Marsha Smith
.....

Miss Marsha Smith
Chairman



Jacqueline Irons
.....

Mrs. Jacqueline Irons, J.P.
Member

Chelsie Shellie-Vernon
.....

Mrs. Chelsie Shellie-Vernon
Member

Witness:

.....

Mr. Gary Lediard
Secretary to the Division