

**INDUSTRIAL DISPUTES TRIBUNAL**  
**Dispute No: IDT 40/2024**

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**SETTLEMENT OF DISPUTE**

**BETWEEN**

**UC RUSAL ALUMINA JAMAICA LIMITED**

**AND**

**NICHOLAS WILLIAMS**

***AWARD***

**I.D.T. DIVISION**

**MR. DONALD ROBERTS, C.D., J.P.-** **CHAIRMAN**

**MR. ERROL BECKFORD** - **MEMBER**

**DR. DENESE MORRISON, J.P.** - **MEMBER**

**SEPTEMBER 24, 2025**

INDUSTRIAL DISPUTES TRIBUNAL  
AWARD  
IN RESPECT OF  
AN INDUSTRIAL DISPUTE  
BETWEEN  
**UC RUSAL ALUMINA JAMAICA LIMITED**  
**(THE COMPANY)**  
AND  
**MR. NICHOLAS WILLIAMS**  
**(THE AGGRIEVED)**

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REFERENCE

By letter dated September 10, 2024, the Hon. Minister of Labour and Social Security, pursuant to Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act, 1975 (the "LRIDA" or the "Act") referred to the Industrial Disputes Tribunal (the "Tribunal") for settlement, the dispute between **UC Rusal Alumina Jamaica Limited** (the "Company") and **Mr. Nicholas Williams** (the "aggrieved worker") with the following Terms of Reference: -

**"To determine and settle the dispute between UC Rusal Alumina Jamaica Limited on the one hand, and Nicholas Williams on the other hand, over the termination of his employment."**

DIVISION

The division of the Tribunal selected in accordance with Section 8(2)(c) of the Act to hear the dispute comprised:

Mr. Donald Roberts, C.D., J.P.	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2)(c)(ii)
Dr. Denese Morrison, J.P.	-	Member, Section 8(2)(c)(iii)

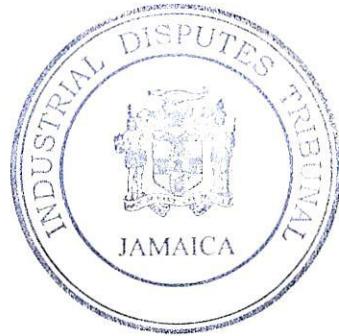
## REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

Mrs. Kelley C. Wong-Henry	-	Attorney-at-law
Mr. Mikhail Jackson	-	Attorney-at-law
Ms. Analiese Minott	-	Attorney-at-law

In attendance:

Mr. Glendon Johnson	-	Director, Human Resource
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The **Aggrieved Worker** was represented by:

Mr. Vincent Morrison	-	Industrial Relations Consultant
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In attendance:

Mr. Nicholas Williams	-	Aggrieved Worker
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## SUBMISSIONS AND SITTINGS

The parties submitted briefs to the Tribunal and made oral presentations over nineteen (19) sittings during the period November 4, 2024 to July 16, 2025. Over the course of the sittings the Tribunal reviewed thirty-six (36) exhibits along with testimonies by way of oral evidence.

## BACKGROUND TO THE DISPUTE

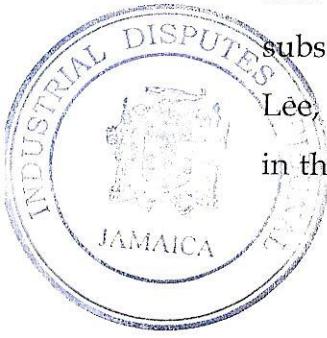
1. UC Rusal Alumina Jamaica Limited is a Company operating in Jamaica's alumina production industry engaged in the production of alumina and bauxite. Its registered offices are located at Kirkvine, Manchester. The Company also operates farms in Manchester and St. Ann. Mr. Nicholas Williams was employed to the Company in January 16, 2020 on a two-year fixed term contract as a Senior Resource Protection Officer (SRPO). His contract was renewed at the expiration of the period for a further two years, scheduled to end on January 15, 2024. On May 3, 2023, prior to the expiration date, Mr. Williams' contract was terminated for cause.

2. An incident of theft involving cattle feed occurred at the Company's Mines Diary location on Sunday, March 6, 2022, (there was also evidence of such occurrence on Saturday, March 5). An official recording of the incident was made on the same day, implicating an agricultural worker, Mr. Jordain Lewis. The report was logged by Mr. Wentworth Lee, who was then employed to the Company as a Senior Resource Protection Officer.
3. Approximately Twelve (12) months after the reported theft had occurred, consideration was given to offering Mr. Roshane Robinson, a Quest Security Guard, direct employment with the Company. During the evaluation process it became known that Mr. Robinson was alleged to be involved in the theft of the cattle feed at the Mines Diary location in March 2022, and therefore, was seen as a 'security risk' and should not be employed.
4. Further investigation revealed that Mr. Nicholas Williams, along with two (2) other SRPOs, Mr. Wentworth Lee and Mr. Floid Lake, held a meeting on Monday, March 7, 2022, where they were made aware of Mr. Robinson's involvement in the previous day's cattle feed theft and agreed among themselves not to report the matter to the management of the Resource Protection Division (RPD).
5. Mr. Williams was issued a letter dated April 17, 2023, inviting him to a Disciplinary Hearing to answer to allegations regarding his dereliction of duty as a SPRO. The Disciplinary Hearing was held on April 21, 2023 and Mr. Williams' services were terminated on May 3, 2023. Mr. Williams appealed the decision but it was upheld.
6. The matter was referred to the Ministry of Labour and Social Security for conciliation. However, the dispute remained unresolved after a number of conciliatory meetings and, thereafter, was referred by the Minister to the IDT for settlement.



## THE COMPANY'S CASE

7. Counsel for the Company asserted that Mr. Williams' duties as a SRPO included securing the Company's assets and staff as well as reporting all incidents in the RPD's log book. His failure to report the outcome of the meeting on Monday, March 7, 2022, amounted to a dereliction of duty, and the Company adopted a fair procedure in determining his dismissal.
8. The Company's first witness was Mr. Hylton Pinnock, the Resource Protection Manager. He has been employed to the Company since 1997, and previously worked with the Bank of Nova Scotia. The RPD employs about 15 persons and about 200 private security guards contracted by the Company. He said Mr. Williams was re-employed to the Company in January 2020 following his resignation as a contractor some 3½ years prior. He said the working relationship between himself and Mr. Williams was good.
9. Mr. Pinnock stated that the main activities at Kirkvine is agricultural and there had been reportedly increasing incidents of theft at the location necessitating higher levels of security arrangements. He said that it was during the process of offering Mr. Roshane Robinson, who was then a Quest Security Officer, direct employment at WINDALCO that he received a call from Mr. Wentworth Lee, a former SPRO with the Company sometime around January 2023, who informed him that Mr. Robinson was a security risk as he was involved in the March 6, 2022 cattle feed theft. He said Mr. Lee had resigned sometime before after he was caught stealing fuel from the Company for his personal use.
10. Mr. Pinnock testified that regular Monday morning meetings were held by the RPD to review security occurrences, incidents and infractions and determine the next step. He said one such meeting was convened on Monday, March 7, 2022, subsequent to the incident of March 6, 2022 but that following that meeting Messrs Lee, Lake and Williams met and agreed to 'cover up' Mr. Robinson's involvement in the theft. Mr. Pinnock maintained that Mr. Williams was on shift at the time of

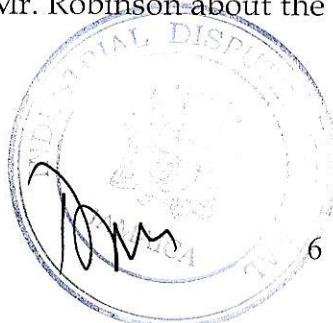


the meeting, but did not log the incident, or reported the matter of Mr. Robinson's involvement in the theft. He said his job was to conduct an investigation to determine whether there was dereliction of duty on the part of Mr. Williams. Mr. Pinnock said Mr. Williams believed that Mr. Lee was carrying 'bad blood' for him arising from an incident involving missing fuel key for the Company's ambulance.

11. Under cross examination, Mr. Pinnock admitted that although Mr. Robinson's image was seen on the security video footage during the incidents of March 5, and 6, 2022, he was not asked to provide a report on the matter. Mr. Pinnock acknowledged that Mr. Dwayne Wellington, the Resource Protection Coordinator, signed both the charge letter and the letter of termination.
12. The Company's second witness was Mr. Anthodda Howitt, a Security Officer with Quest Security Company, who was assigned to the Kirkvine location under Mr. Williams' supervision. Mr. Howitt said he reviewed the CCTV footages for March 5 and 6, 2022 and saw Mr. Robinson arriving at the location on both days and observing the person taking the feed from the feed room. He said Mr. Robinson was in clear sight of the persons taking the feed but did not attempt to stop them. He further added that it was left to Mr. Lake to continue the investigation.
13. Mr. Howitt said he was in the control room during the time of the Monday meeting with Messrs. Lake, Lee, Williams and Robinson, and had a clear view of them in the adjoining room. He said that after the meeting Mr. Williams returned and told him that they would be allowing Mr. Robinson to continue working. Subsequently, he was asked by Mr. Pinnock to provide a statement regarding the information he received about Mr. Robinson's alleged 'cover up'.
14. Under cross examination, Mr. Howitt admitted that at the disciplinary hearing he mentioned that he had gotten the information about Mr. Robinson's alleged 'cover up' from Mr. Lee and that it was an "oversight" to not have included Mr. Williams' name.



15. Mr. Wentworth Lee was the Company's third witness. He said he previously worked at UC Rusal as a Senior Resource Protection Officer from 2017 to 2022 and as part of his duties had to maintain a daily log book, do routine checks and respond to emergencies. He testified that he resigned from the Company over a fuel incident. He remembered that on one occasion he was called by Mr. Williams about the missing fuel key and that the matter was eventually reported to Mr. Pinnock. He said he subsequently found the keys in his pocket and agreed to return it. One month after that incident he was caught stealing fuel for his personal use and subsequently resigned.
16. Mr. Lee said that the agricultural area is "*one of the biggest nightmares*" in terms of theft and therefore had regular patrolling among the SRPOs. He said there was a 'daily logger' in which all incidents occurring on the farm had to be recorded, including missing or dead animals. He noted that all reports in the daily logger are seen immediately by the supervisor and logging can only be done by the SRPO on the shift.
17. He told the Tribunal that he viewed the CCTV footage with Mr. Lake and observed from the footage that Mr. Robinson was in the vicinity of the warehouse when Jordan Lewis entered. His overall impression was that Mr. Robinson saw what was happening and believed he was involved in the feed theft on both days. He said that when confronted at the Monday meeting, Mr. Robinson admitted that he saw Jordan Lewis removing the feed but did not report the matter because Lewis' brother was 'a dangerous man' and he feared for his life and that of his family. He averred that he, Mr. Lake and Mr. Williams agreed to give Mr. Robinson a chance, and he (Mr. Lee) told that to Mr. Howitt.
18. Mr. Lee, under cross examination, confirmed that the Monday morning meeting was called by Mr. Lake to garner further information from Mr. Robinson about the incidents on the Saturday (March 5) and Sunday (March 6).



19. Mr. Lanceroy Morris was the Company's next witness. He joined the Company in 2008 and currently serves as the Employee & Community Relations Manager. He defined his role as primarily to "*foster employee engagement and facilitate a harmonious relationship with the staff and the community.*"
20. Mr. Morris outlined the process involved in addressing a grievance. He said the procedure began at the first stage with a report to Mr. Dwayne Wellington, the team leader. Mr. Morris said he became involved at the third stage of the grievance procedure where an appeal was made to him contesting the dismissal. He said he reviewed the minutes from both the disciplinary and first appeal hearings before coming to a decision to uphold the dismissal.
21. Mr. Glendon Johnson, the Director, Human Resource, testified on behalf of the Company. He said that he has been working in the bauxite sector for the past thirty-one (31) years. Mr. Johnson asserted that the SPRO is the person in charge of a particular shift, whether it is an 8-hour or 12-hour shift; he argued that they need to be "honest and analytical" and should be able to observe and report on matters occurring on their shift. In the case at bar, the HR Director told the Tribunal that Mr. Williams was dismissed for dereliction of duty because he failed to report what took place at the meeting held on his shift.
22. Mr. Johnson emphasized that there were three (3) appeal hearings for Mr. Williams, and the appeal process was to 'review what had taken place at the disciplinary hearing as well as to accept new evidence.' He noted that Mr. Floid Lake, Mr. Williams' witness corroborated the evidence that he was present when it was decided not to report Mr. Robinson's involvement in the theft. He said Mr. Williams accepted that he had a duty to report the incident.



23. Mr. Johnson said that it was a fair process that resulted in the termination of Mr. Williams, and that the termination letter signed by Mr. Wellington required the approval of the Managing Director, Mr. Stavitskiy. He believed that Mr. Williams has mitigated his loss by securing employment subsequent to his dismissal.

### **THE AGGRIEVED WORKER'S CASE**

24. Mr. Nicholas Williams, the aggrieved worker, testified on his own behalf. He said his first period of employment with the Company was from 2014 to 2016 when he resigned to go overseas. He subsequently returned to the island and sought and obtained employment at the Company in January 2020.

25. He attested that on Sunday, March 6, 2022 at about 6:45 pm, Mr. Wentworth Lee told him in the presence of Mr. Roshane Johnson, Mr. Floid Lake and Mr. Ricardo Johnson, that he made a "big catch", indicating that he had caught Mr. Lewis stealing. Mr. Lee was the SPRO on the shift at that time, and he, Mr. Williams, was to take up duties starting at 7:00 pm Sunday evening through to 7:00 am Monday morning.

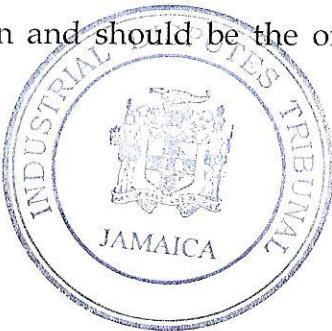
26. Mr. Williams said that on Monday, March 7, 2022, the usual meeting of the Resource Protection Officers (RPOs) was held by telephone across the Company's three locations to assess the incidents and reports that occurred the previous week. Mr. Pinnock asked Mr. Tombuski, the Director of RPD to report on the Sunday night's incident where he informed the meeting that Mr. Lee had discovered the theft of the diary feed which led to the arrest of Mr. Lewis. He further stated that Mr. Lake was assigned the task of overseeing the investigation.

27. Mr. Williams said that at the regular Monday morning RPO meeting held on March 21, 2022, Mr. Lake was asked for an update on the investigation and he indicated that he had one more person to talk to, and that was Mr. Robinson, who he said was on the compound at the time. At the end of the meeting, Mr. Williams said he was informed by Mr. Lake that he and Mr. Lee would be having a meeting



with Mr. Robinson and invited him to attend. Mr. Williams said he was in and out of the meeting as he was on the 7:00 am to 7:00 pm shift. Further in his testimony he averred that at no time did he hear Mr. Robinson admitting to his involvement in the theft.

28. Mr. Williams told the Tribunal that he received a letter inviting him to a disciplinary hearing on the morning of April 19, 2023, was asked to write a statement about what transpired at the meeting of March 21, 2022 and that he should have a representative by 4:00 pm on the same day. At the disciplinary hearing he said he received no document and denied saying he did not wish to have a representative.
29. Mr. Williams stated that the letter of termination of May 3, 2023 [exhibit 6] which claimed: *"you also confirmed that the incident of the theft of dairy rations by Mr. Robinson occurred while you were on duty,"* was not true as he was not on the shift at the time of the incident. He stated that Mr. Howitt was not in attendance at the March 21, 2022 meeting called by Mr. Lake, and that he was lying when he told the Tribunal that he was the one who told him (Mr. Williams) about letting off Mr. Robinson.
30. It was further stated by Mr. Williams that Mr. Lee's evidence was "*extremely hostile*" because of the fuel theft episode in which he provided the information that resulted in Mr. Lee's confession and resignation. He requested at the second appeal hearing the evidence the Company relied on as well as a request to see the video footage of March 6, 2022.
31. Under cross-examination, Mr. Williams admitted that the purpose of the March 21, 2022 meeting was to find out if Mr. Robinson could provide further information on the theft incident; he reiterated that Mr. Lake was his senior and the person in charge of the investigation and should be the one to report the outcome of the meeting.



32. He said a job description was not provided to him although he confirmed receiving one at the disciplinary hearing. He further denied stating at the hearing, and confirmed in the minutes, that he did not wish to be represented. It was pointed out to Mr. Williams that at the Appeal Hearing held on May 17, 2023, he stated that he was in Kingston at a construction site when he received the letter inviting him to a hearing, but told the Tribunal that he was at home with his wife who was recovering from surgery. Under re-examination, reference was made to an email dated February 1, 2023, sent by Mr. Pinnock to Mr. Williams under the subject heading: 'Request to provide statement re allegations.' The email stated that Mr. Williams was "*a witness to the confession of Mr. Roshane Robinson*"; that the "*confession was corroborated by CCTV footage which you allegedly aware of and agreed to discard*"; and that he was "*allegedly involved in the rearing of cattle on the same property occupied by Mr. Lake where the company's resources were being used to sustain your calves.*" The Tribunal, in accepting the email into evidence, agreed to the recall of Mr. Pinnock to address specific matters arising there from.

33. Mr. Roshane Robinson testified on behalf of the aggrieved worker. He said he was formerly employed to Quest Security and assigned to UC Rusal. He said Mr. Lee, who was on the shift, contacted him about the theft involving Mr. Lewis, which led to his arrest. At the meeting of March 21, 2022, he said he was present along with Messrs Lake, Lee and Williams, who was in and out of the meeting. He was invited to the meeting by Mr. Lake to gather information about the theft.

34. Under cross-examination Mr. Robinson said initially he denied having any knowledge of the theft; further he said he did not agree with Mr. Lake's statement [exhibit 16] about what took place at the March 21, 2022 meeting.



### **Re-call of Mr. Pinnock**

35. Mr. Pinnock said the email of February 1, 2023, was for Mr. Williams to provide information about the meeting of March 21, 2022 and in relation to having a farm along with Mr. Lake. He said Mr. Williams provided a response on February 3, 2023.

### **ISSUES**

36. The issues raised in this matter for determination are as follows:

- Whether Mr. Williams' failure to report the outcome of the March 21, 2022 meeting amounted to a dereliction of duty and provided reasonable grounds for the Company to pursue disciplinary action;
- Whether the Company followed the provisions of the Labour Relations Code and was fair and just in all the circumstances leading to Mr. Williams' dismissal.

### **Whether Mr. Williams' failure to report the outcome of the March 21, 2022 meeting amounted to a dereliction of duty and provided reasonable grounds for the Company to pursue disciplinary action**

37. It is trite law that the onus in an unfair dismissal claim rests with the employer to demonstrate the merits of its case. In *Halsbury's Laws of England, Fourth Edition, Volume 16*, it clearly states that -



*"In all cases the burden lies upon the employer to show that the dismissal was fair. He must show what was the reason (or, if there is more than one, the principal reason) for the dismissal; and he must also show that it was a reason which the law regards as acceptable; and that in the circumstances, having regard to equity and the substantial merits of the case, he acted reasonably in treating it as a sufficient reason for dismissing the employee."* [page 413].

38. Mr. Williams was dismissed for 'dereliction of duty'; this means the committal of a serious breach of responsibilities and obligations as set out in his employment contract. This has to show intent as declared in a 2019 judgement involving *Autozone and Motor Industry and Others*, where the Labour Appeal Court of

South Africa ruled that the employer must prove an employee's intentional neglect of duties. In that regard, the Tribunal's duty must be to assess whether Mr. Williams' action or omission was deliberate, purposeful or intentional; whether his conduct pierced the veil of negligence in the performance of his duties; and whether the matrix of facts support the contention that he failed to perform the duties expected of him as a SPRO.

39. Mr. Williams, at the time of his dismissal, was employed as a Senior Resource Protection Officer operating under a fixed-term contract for two (2) years commencing on January 16, 2022 and ending on January 15, 2024. The contract made reference to the disciplinary procedures where "*the Company shall have the right to reprimand, suspend without pay or dismiss any employee for just cause and without prejudice... in accordance with the Disciplinary Procedure and Code outline in the Employee Handbook*". Further, the contract stipulated that he "*...shall at all times observe and conform to the policies and procedures governing the conduct of the Company's employees in the discharge of your duties and responsibilities.*"
40. Those duties and responsibilities existed under separate cover in his job description. His overall responsibility is to "*functionally lead(s) the work of assigned contractor security officers in maintaining security and safety of people and property in assigned area.*" The areas under 'specific accountabilities/major tasks' bear relevance in this matter. These are listed as under:
  - *"Record all security incidents and routine occurrences in the RPD Database – Daily Logger – in an accurate, explicit and timely manner. SRPO must ensure that all Event and Tasks are closed before the shift is handed over.*
  - -----
  - -----
  - -----
  - *That all theft reports and/or any form of employee misconduct is investigated immediately."*



41. Under 'Deliverables/Skills/Competencies', the SPRO is expected to provide -

- *"Preliminary reports of all theft investigations to be submitted to the RP Coordinator within 24 hours; and the final reports of all theft investigations to be submitted to the RP Coordinator within 5 working days."*
- -----
- *"A written report of all incidents and security breaches to be reported to RP Coordinator immediately upon detection."*

42. On April 17, 2023, Mr. Williams received a letter from Mr. Dwayne Wellington, Resource Protection Coordinator advising him of a disciplinary hearing scheduled for Friday, April 21, 2023, to answer to charges relating to his 'dereliction of duty' *"as a Security Officer by not reporting the involvement of security guards in the theft of company property and the obvious security risk to WINDALCO's operation."* He was asked to respond to the allegation by Wednesday, April 19, 2023, no later than 4:00 pm as well as to indicate the name of his representative.

43. A disciplinary hearing was held on April 21, 2023, chaired by Mr. Keith Reid, and comprising Mr. Robert Spence and Ms Rhana Gregory. The minutes of the hearing showed that Mr. Williams elected to be self-represented and that he confirmed receiving a copy of his job description, although he denied both claims in his testimony before the Tribunal. When asked about the March 21, 2022, meeting and why the incident was not reported, the following exchange took place:

*"Pinnock: Why didn't you write about the meeting?*

*Williams: On the day, I didn't even know that you were not aware of the situation. Mr. Lake was the one doing the investigation. I was just there to ask Mr. Robinson if he saw anything*

*Pinnock: The reason why you are here is that you were derelict in your duty as a Senior Resource Protection Officer having known that this person is a risk to security operation and you did not report it to me. That is why you are here.*

*Williams: I thought you were aware of it because Mr. Lake was the one in charge of everything so I didn't know he didn't report it to you."*



44. There was also conflicting statements between Messrs Lee, Howitt and Lake at the disciplinary hearing in respect of Mr. Williams' presence in the meeting. Mr. Lee said -

*"Mr. Williams was not in and out of the meeting it was not a busy day, there was no emergency. He was sitting in the chair towards the left in the entire meeting and I myself was in there also."*

45. Mr. Howitt, however, said he was going 'back and forth a few times'; and Mr. Lake made the following comment:

*"I am not sure if Williams was in the meeting because he was on shift and he was going back and forth. I don't remember him being in the meeting at the time when the decision was made."*

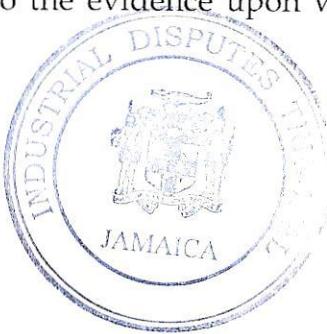
46. Mr. Pinnock told the Tribunal that he initiated an investigation based on a January 2023 telephone conversation with Mr. Lee in which he implicated Mr. Williams in covering up information about Mr. Robinson's involvement in the theft of feed on March 6 and 7, 2022. He, however, did not request of Mr. Lee a written statement regarding the March 21, 2022 meeting. Mr. Pinnock said the purpose of the investigation was to determine whether or not Mr. Williams was derelict in his duties in not reporting the outcome of the March 21 meeting. Prior to the disciplinary hearing in April, 2023 only two statements were submitted into evidence as part of the investigation: one from Mr. Howitt dated January 31, 2023 and the other from Mr. Williams, dated February 2, 2023. Mr. Roshane Robinson's statement was dated May 26, 2023 and Floid Lake's statement dated June 8, 2023, after the date of the hearing and the first appeal.

47. But neither the statements from Howitt nor Williams addressed the substantive issue that formed the core of the investigation. Mr. Howitt's statement was on matters concerning the operation of a farm at the Shooter's Hill, quarry area, and activities surrounding the theft of the feed. His only reference to the March 21, 2022, meeting was that *"...he overheard that they (Lake, Lee and Williams) were going to let him (Robinson) continue worked (sic) because he was trying to get in the police force at the time."* Mr. Williams' statement, on the other hand, addressed the incident of



theft occurring on March 6 and 7, 2022, declaring that he was not on duty on the dates the incident occurred, and that he was not involved in any cattle rearing on WINDALCO's property.

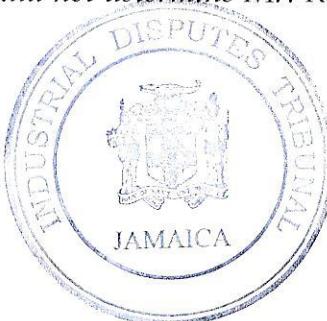
48. Mr. Pinnock said that as part of his investigation he "*questioned a number of persons;*" who were those persons and where were their reports? And why, based on Mr. Pinnock's own testimony, was it necessary for him to review the video footage of March 2022 as part of his investigation in determining whether Mr. Williams was derelict in his duties by not reporting the outcome of the March 21 meeting?
49. While the Tribunal is not at large to substitute its own thinking for that of the employer, the employer is, nevertheless, expected to provide such evidence as is necessary on the facts to show that there were reasonable grounds on which to justify the dismissal. But the factual matrix of this case does not lend itself to linear thinking for the following reasons: (a) the March 21, 2022, meeting was initiated by Mr. Lake, who was assigned the responsibility to conduct further investigation into the theft of the feed; (b) it could not reasonably be expected that Mr. Williams would record the incident in the daily logger as this would not qualify as an 'incident' falling within the core of the assigned duties outlined in his job description; (c) the outcome of the investigation could not be reported on by anyone else except Mr. Lake, on whom the Monday RPD meetings relied for updates; this clearly was his responsibility.
50. It would appear from the evidence that the disciplinary panel took into account matters that were not relevant to the question before it. Mr. Pinnock, who represented the Company, outlined its case at the commencement of the hearing and directed the panel to the evidence upon which it would rely. The minutes quoted him as saying -



51. "He expressed that he was there from the Company's stand point, to present evidence against Mr. Williams, who neglected his duty as a Senior Resource Protection Officer at Kirkvine. He stated that the evidence will be presented by:  
*a Security Guard who also viewed video footage, as well as Mr. Williams. Mr. Williams job description, as it relates to similar cases."*

52. The confusion as to what matters the disciplinary panel considered in its deliberation is evident both in its findings and Mr. Williams' letter of termination. Where the disciplinary panel was obliged to examine the specific nature of the matter giving rise to the disciplinary action, that is, whether Mr. Williams was derelict in his duty by not reporting the outcome of the March 21, 2022 meeting, their findings, however, went beyond that to include the following:

1. *Mr. Williams confirmed that he has a job description and that he reports directly to Mr. Hylton Pinnock.*
2. *Mr. Williams stated that he has a duty to report all matters considered to be a security risk to the Company including people, to Mr. Hylton Pinnock.*
3. *Mr. Williams confirmed that the theft of dairy rations happened on his shift*
4. *Messrs. Lee, Lake and Williams all confirmed that the meeting pertaining to Mr. Robinson's involvement in the theft of dairy rations was held.*
5. *Mr. Williams stated that he did not log any information regarding the meeting because he believed that Mr. Lake had reported the matter to Mr. Pinnock.*
6. *Mr. Williams confirmed that he has not seen any information pertaining the investigation into Mr. Robinson's involvement in the theft of dairy rations, in the department's logging system.*
7. *Mr. Williams confirmed that he is aware that the matter was not discussed in department's Monday meetings*
8. *Messrs. Howitt and Lee stated that they saw two videos that showed Mr. Robinson's involvement in the theft of dairy rations*
9. *Messrs. Lake and Williams stated that they saw only one video from which they could not determine Mr. Robinson's involvement in the theft of dairy rations*



53. Neither the evidence before this Tribunal, nor the minutes of the disciplinary hearing, showed that Mr. Williams was on shift when the theft of dairy rations occurred. In fact, his comment that he was not at work on "*the actual day of the incident*", was not controverted, and Mr. Pinnock's testimony confirmed that Mr. Lee was on shift at the time of the incident. Moreover, there is evidence that the incident was logged by Mr. Wentworth Lee in the 'Task Detail Report'. (*see exhibit 8*). The panel's findings at #3 is, therefore, not consistent with the stated facts.

54. This factual error, it would seem, influenced the decision of the panel in recommending Mr. Williams' termination. In the termination letter of May 3, 2023, the following was stated:

*"The Company concluded that you have been derelict in your duty as a Senior Resource Protection Officer by:*

1. *Not reporting the theft of dairy rations*
2. *Subsequently meeting with your colleagues to make a determination on a serious matter without the involvement of RPD's management."*

55. Mr. Wellington chaired the first appeal hearing on May 17, 2023, where Mr. Williams attempted to correct the minutes regarding his presence on duty at the time of the thefts. But in upholding the decision of the panel, Mr. Wellington's letter of May 25, 2023, made no attempt to correct the obvious falsity. He stated the decision was based on:

*"... the review of the details of the video footage in relation to the theft of animal feed that occurred while Mr. Nicholas Williams was on duty..."*

56. It is to be noted that "*not reporting the theft of dairy ration*" was never a charge levelled against Mr. Williams, and therefore, to include it as the principal reason for his dismissal is patently and obviously unfair.

57. In removing any diffidence from inferring that there seemed to have been a determined intention on the part of the Company to find a basis for severing the contractual relationship with Mr. Williams, the dictum of Sykes, J (as he then was)



in *National Commercial Bank Jamaica Ltd. v. IDT and Peter Jennings* becomes instructive. The Learned Judge in the case, had asserted that “*no court can tell the IDT what weight to give to any fact or inference drawn from a fact*; and so we infer, from the facts presented and “*having regard to equity and the substantial merits of the case*,” that no reasonable grounds existed for the charge to have been laid against Mr. Williams.

**Whether the Company followed the provisions of the Labour Relations Code and was fair and just in all the circumstances leading to Mr. Williams' dismissal.**

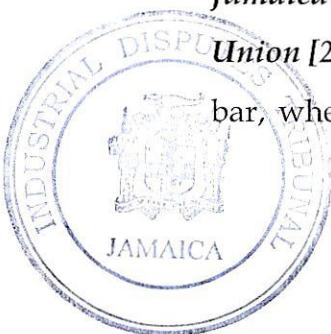
58. In matters of discipline, paragraph 22 of the Labour Relations Code (the “Code”) addresses the procedures to be followed. It stipulates the requirement to:
  - (a) *specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;*
  - (b) *Indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
  - (c) *Give the worker the opportunity to state his case and the right to be accompanied by his representative;*
  - (d) *Provide for a right of appeal, wherever practicable, to a level of management not previously involved;*
  - (e) *Be simple and rapid in operation.”*
59. The Code provides for practical guidelines which would be “*...helpful for the purpose of promoting good labour relations....[and] to protect workers and employers against unfair labour practices.*” That “*work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it...*”
60. In that regard, it is the remit of the Tribunal to exercise its own judgment, guided, of course, by industrial relations practices and the rules of natural justice to determine whether Mr. Williams' dismissal was fair and in keeping with the spirit of the Code.

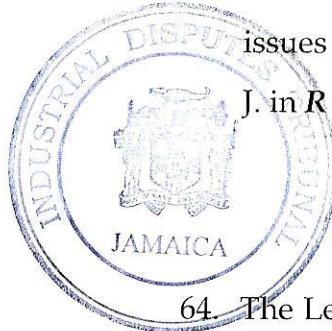


61. The Company tendered its Employee Handbook into evidence and the 'Disciplinary and Grievance Procedures' outlined in section 9 were carefully examined. The Tribunal is reasonably satisfied that the management complied with the requirements outlined in the Company's Handbook in dealing with this matter. In relation to the Code, the basic tenets of paragraph 22 appeared to have been observed, namely: "*the matter giving rise to the disciplinary action [was] clearly specified and communicated in writing*," and Mr. Williams was given the right of appeal. Further, we accepted Mr. Johnson's testimony that although the letter of termination was signed by Mr. Wellington, a supervisor, "*reference to more senior management*" took place, and further accepted that Mr. Williams elected to be self-represented as there was no indication in the appeal hearings that he raised this as a point of concern.

62. Bearing in mind that although the Tribunal is vested with a jurisdiction to settle disputes 'completely at variance with basic common law concepts'; fairness, reasonableness, cooperation and human relationships are fundamental precepts for consideration. In this case two issues of procedural fairness appear to arise for further consideration. The first, is the role of Mr. Wellington; and the second, is the discrepancies existing between the charge letter, the minutes of the hearing and the termination letter. Indeed, this has to be examined to determine the extent to which either or both may have compromised Mr. Williams' right to a fair and impartial hearing.

63. Mr. Wellington was the person who signed the notification for the disciplinary hearing, the letter of termination of Mr. Williams, and was the chairman of the first Appeal Hearing, which raises questions of apparent bias. The case of *The Bank of Jamaica v. The Industrial Disputes Tribunal and the Bustamante Industrial Trade Union* [2017] JMSC Civ 173, is, for the Tribunal, indistinguishable from the case at bar, where Evan Brown, J. (as he then was) laid out very clearly and succinctly





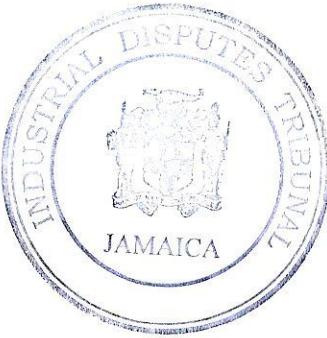
issues relating to 'apparent bias'. The Learned Judge quoted from Lord Hewart C.

J. in *R v. Sussex Justices, ex p. Mc Carthy* [1924] 1 K.B. 256 where he 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."*

64. 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."*" In the **Bank Of Jamaica (BOJ)** case, the conclusion was that where five members of the Bank's Committee of Administration (COA), having taken a decision, now sat in appeal as the Management Committee (MC) they "*may well have been able to put their earlier positions aside and consider the matter afresh but it is the real possibility of approaching the matter with a closed mind that impugns their decision.*"
65. The IDT, in hearing the **BOJ** case earlier had ruled that "*the composition of the COA and MC was source of concern as it gives rise to accusations of victimization, discrimination, bias and unfair treatment...*", and the Court agreed and concluded that it "*...was a reasonable finding which the IDT was entitled to make.*"
66. The Courts have long pronounced on the difficulty in removing an apparent bias where, as is the case of Mr. Wellington, he was party to the termination, "*to appear independent and impartial if he is called upon on another occasion to adjudicate where the same factual matters are in issue...*" [See **Donald Panton and Janet Panton v Minister of Finance and The Attorney General** (2001) 59 WIR 418].
67. In this case, a fair-minded and informed observer may be constrained to even think Mr. Wellington could possibly consider "*the matter afresh*", bearing in mind that the report about the March 21, 2022 meeting - which led to the charge against Mr. Williams - emanated from his Division, the RPD, based on a report which was communicated to Mr. Pinnock, the RPD Manager and the person to whom he reports. Furthermore, the issue was compounded by the fact that Mr. Wellington signed the letter of termination and then was expected to hear an appeal on a matter that bore his signature.

68. Beyond the issue of apparent bias, the question of 'multiple roles' also emerged in the *Bank of Jamaica* case, where the HR Director, Mrs. Panton had written the letter to Mr. Johnson, the aggrieved worker, inviting him to a disciplinary hearing. She also chaired the disciplinary panel. The *NCB* case [supra] was also referenced by the Learned Judge. He noted that "*the issue of a disciplinary hearing being conducted by the persons who were a part of the institution which is making the accusation or bringing the charges was considered*" by the Courts. He stated the following:



*"The local Court of Appeal accepted the position that although domestic enquiries ought not to be equated with the formalities of criminal trials, the principles of natural justice are not excluded; in a particular, the principle that a man should not be judge in his own cause. The Court of Appeal held that it was not perverse for the IDT to find that:*

*The procedure should show impartiality and be presided over and/or managed by persons who will be fair and objective, and certainly not part of the institution which is making the accusation or bringing the charges against the accused."*

69. The Court also recognized that "*the signing of the letter which contained the disciplinary charges should not, by that same token, result in automatic disqualification from presiding at the disciplinary hearing*", or we may add, an appeal hearing. In the words of Sinclair-Haynes, JA:

*"It is pellucid from the authorities, that whether an internal hearing can be presided over by persons from the organization, is dependent on the peculiar facts and circumstances of each case and ultimately whether the procedure was fair."* - [The BoJ case, pages 36-37]

70. In the *Bank of Jamaica* case Evan Brown, J. concluded that "*the Court of Appeal appears to be saying that it is a question for the IDT whether the procedure followed in the particular circumstances was impartial...*" Here, the accusation against Mr. Williams was made by the RPD, of which Mr. Wellington has overall supervisory function. It is hard to believe that, beyond signing the 'charge letter', he was not instrumental in the formulation of the charge. In his appeal letter dated May 25, 2023, upholding the dismissal, Mr. Wellington asserted as one of the reasons: "*the*



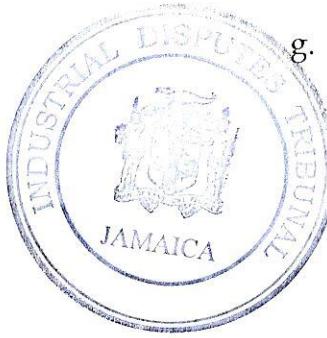
*review of the details of the video footage in relation to the theft of animal feed that occurred while Mr. Nicholas Williams was on duty", although there was no evidence to support the assertion that there was a review of the video footage at the appeal hearing. The position advanced in the letter would seem to have further obscured the reasons or principal reason for the charges laid against Mr. Williams, and showed a clear case of the management embarking on a fishing expedition.*

## **FACTUAL CONCLUSIONS**

71. Based on the foregoing, the evidentiary inferences leads us to the following conclusion:

- a. The meeting of March 21, 2022, was part of the ongoing investigation to be conducted by Mr. Lake; there was no requirement for Mr. Williams to be present at that meeting; it was a random meeting, and well outside the scope of his duties as a SPRO. He was merely invited to the meeting which, in fact, took him away, periodically, from the requirements of his duties and responsibilities in his job description
- b. We accepted Mr. Lake's evidence that Mr. Williams may not have been present when the decision was made to have Mr. Robinson continue in his job. The notion, therefore, that Mr. Williams should have logged the information he received about Mr. Robinson's involvement in the theft of feed rations is absurd, as it was the responsibility of Mr. Lake to report to Mr. Pinnock on matters arising from the investigation
- c. The matter giving rise to the disciplinary action was set out in the 'charge letter' of April 17, 2023. Both Messrs. Pinnock and Johnson, in their testimonies, emphasized that the charge against Mr. Williams' was his failure in not reporting the involvement of Mr. Robinson in the theft of Company property which he confessed to at the March 21, 2022 meeting





- d. The dismissal letter of May 3, 2023, however, concluded that Mr. Williams was derelict in his duty in "*not reporting the theft of dairy rations*", as the principal charge, and then added the subsequent charge arising from the March 21 meeting. The principal charge was clearly not stated in the 'charge letter' as required in paragraph 22(i)(b) of the Code.
- e. The basis of the principal charge appeared to be the erroneous conclusion that the theft of dairy rations occurred on Mr. Williams' shift. The evidence is indisputable that it was Mr. Lee who was on the shift at the time and not Mr. Williams [*see exhibit 13, page 3*]; and, in fact, Mr. Lee had provided a Task Detail Report of the incident on March 6 [*see exhibit 8*].
- f. The Company, therefore, fell into grave error when it charged Mr. Williams on the matter of dereliction of duty arising from the March 21, 2022 meeting, but terminated him for his failure to report the incident on theft which occurred on March 6, 2022, when the evidence was clear that he was not the assigned officer on that shift.
- g. Mr. Wellington's involvement, as a matter of fact and law, would, to the fair-minded and informed observer, raise question of apparent bias. The initial charge against Mr. Williams emanated from his department, of which he is a senior officer, and, we believed, would have been involved in the formulation of the charge. In addition to signing the charge letter, Mr. Wellington chaired the first appeal hearing.
- h. Based on the Court of Appeal ruling mentioned earlier, Mr. Wellington's multiple roles would have created an unacceptable conflict of interest and undermined impartiality. One of the cardinal principles of natural justice, that is, "*a man should not be judge in his own cause*," in this instant case, was patently ignored.

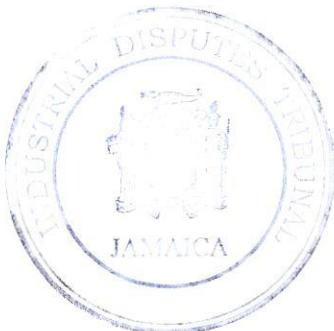


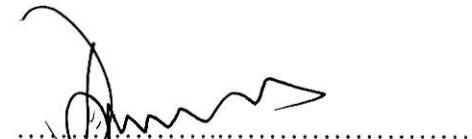
- i. The Company's decision to terminate the services of Mr. Williams was reached without the elementary rules of natural justice being complied with, and the defects arising from this were never cured by the subsequent appeal hearings.

## **AWARD**

72. In accordance with Section 12(5)(c) of the Act, the Tribunal finds that the dismissal of Mr. Nicholas Williams was unjustifiable and order the Company to compensate him in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) for his unjustifiable termination.

Dated this 24<sup>th</sup> day of September, 2025



  
Mr. Donald Roberts, C.D., J.P.  
Chairman

  
Mr. Errol Beckford  
Member

  
Dr. Denese Morrison, J.P.  
Member

Witness:



Ms. Tasha Pearce  
Acting Secretary of the Division