

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 12/2019

SETTLEMENT OF DISPUTE

BETWEEN

UC RUSAL ALUMINA JAMAICA LIMITED

AND

**UNION OF CLERICAL, ADMINISTRATIVE AND
SUPERVISORY EMPLOYEES (UCASE)**

AWARD

I.D.T. DIVISION

- MISS MARSHA SMITH - CHAIRMAN**
- MR. LESLIE HALL, JP - MEMBER**
- MR. CLINTON LEWIS - MEMBER**

AUGUST 13, 2020



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IDT 12/2019

INDUSTRIAL DISPUTES TRIBUNAL

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IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

UC RUSAL ALUMINA JAMAICA LIMITED
(THE COMPANY)

AND

UNION OF CLERICAL, ADMINISTRATIVE AND SUPERVISORY EMPLOYEES
(THE UNION)

REFERENCE:

By letter dated April 18, 2019 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 UC Rusal Alumina Jamaica Limited on the one hand, and the Union of Clerical, Administrative & Supervisory Employees on the other hand, over the Union's claim for Improved Wages and other improved conditions of employment for the period 2017/2019. "



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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
- Mr. Leslie Hall J.P. - Member, Section 8 (2) (c) (ii)
- Mr. Clinton Lewis - Member, Section 8 (2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The Company was represented by

- Mr. Allan Wood Q.C. - Attorney-at-Law
- Ms. Kelly Wong - Attorney-at-Law

In attendance were:

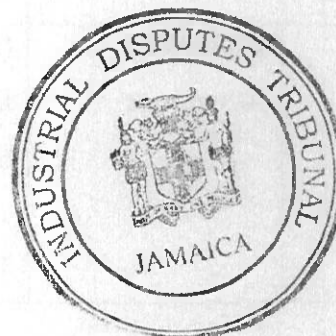
- Mr. Leonard Stavitskiy - Managing Director
- Mr. Glendon Johnson - Human Resources Director
- Mr. Alexey Zaytsev - Finance and IT Director

The Union was represented by:

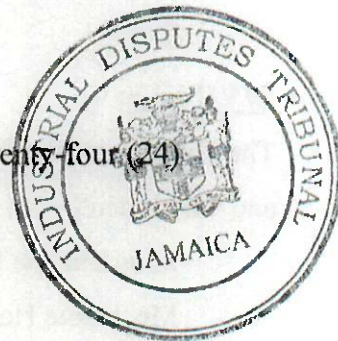
- Mr. Vincent Morrison C.D. - President

In attendance were:

- Mr. Garth Cheese - Chief Union Delegate
- Mr. Barrington Wilks - Deputy Chief Delegate
- Mr. Peter Onfroy - Union Advisor
- Mr. Maurice Harrison - Delegate
- Mr. Michael Edwards - Delegate
- Mr. Clifford Carlton Campbell - Delegate



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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during twenty-four (24) sittings held between October 2, 2019 and February 20, 2020.

BACKGROUND TO THE DISPUTE:

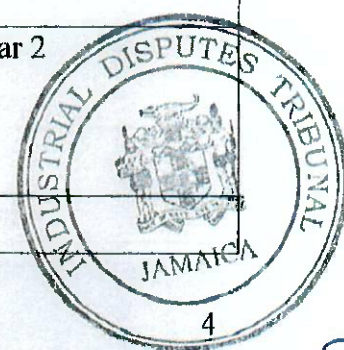
UC Rusal Alumina Jamaica Limited (hereinafter called “the Company”) is incorporated in Jamaica with its registered office at Kirkvine in the parish of Manchester. The principal activity of the Company is bauxite mining and alumina production. The Union of Clerical Administrative & Supervisory Employees (UCASE), hereinafter referred to as “the Union”, is duly registered under the Trade Union Act of Jamaica having its registered office at 7 Tangerine Place, Kingston 10. The Union has bargaining rights for workers in the bargaining unit.

By way of letter dated August 27, 2018, the Union submitted a 29 -point claim on behalf of the workers it represents for increased wages and improved conditions of employment for the period November 3, 2017 to November 2, 2019. The items of claim are set out below:-

Number of items	Claim Items	UCASE Position
1.	Duration	The duration of this contract shall be for two (2) years commencing November 3, 2017 to November 2, 2019
2.	Wages/Salaries	a. That an increase be granted of not less than 12% in year 1 and an additional increase of 15% in year 2 b. Indexation – to be discussed and implemented c. Reclassification exercise to be carried out
3.	Signing Bonus	There shall be signing bonus of \$90,000.00 for all active members of the Union (UCASE.)
4.	Education Assistance	(Policy document to be established) Basic/Prep – Year 1 - \$20,000.00, Year 2 - \$25,000.00 Secondary/High – Year 1: \$30,000.00, Year 2: \$40,000.00 To be prorated for casual and temporary employees.

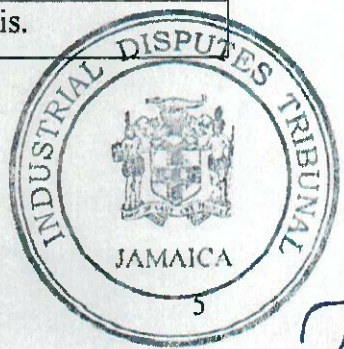
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		Tertiary – Three (3) scholarships per annum for employees' children
5.	Travelling Allowance	There shall be a travelling allowance of \$8,500.00 per week in year 1 and \$9,500.00 per week in year 2
6.	Uniform	Four (4) sets per annum
7.	Sunday Premium	Year 1 \$40/hr. and year 2 \$50/hr.
8.	Shift Premium	Shift Premium shall be 20% of basic rate.
9.	Laundry Allowance	Provision to be made to enable employees to launder at least two sets of working uniforms each week. Claim the amount of \$5000.00 per week in year 1 and \$7000.00 per week in year 2.
10.	End of Service Employment (EOSE)	This shall be increased by 20%.
11.	Health Plan	Temporary/casual employees who are members of the bargaining unit to be included in the current company health scheme
12.	Compulsory Savings	Compulsory savings shall be as follows: 3% Company and 2% Employees for permanent employees
13.	Vacation Leave	<ul style="list-style-type: none"> • 1-5 years – 2 weeks • 6-9 years – 3 weeks • 10 years and over – 4 weeks
14.	Call Out/Call Back	Double time pay for call out/call back
15.	Life Insurance	Personal life insurance coverage for employees shall be 3 times basic annual salary
16.	Unusual Discomfort Allowance	\$42 per hour in year 1 and \$52 per hour in year 2
17.	Lunch subsidy	To be discussed



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18.	Meal Allowance	\$1,2000.00 per occasion – overtime/ out of base
19.	Motor Vehicle Revolving Loan Fund	A pool of \$34 Million Dollars to be established
20.	Revolving Loan Fund	Increase to \$10 Million Dollars
21.	Housing	A pool of 15 Million Dollars. The Company and the Union to explore with NHT, the provision of housing solution for employees. The Company to provide suitable lands at each location for worker housing for all employees.
22.	Existing Contract	Existing contract arrangement to be discussed and clarified and agreed upon.
23.	Redundancy Payment	5 Weeks pay after the completion of two years' service
24.	Public Holidays	To be paid at triple time when worked
25.	CPI/ Lump Sum Adjustment Mechanism	Lump sum adjustment to be discussed and implemented
26.	Overtime	Overtime will be paid after 8 hours work per day or 40 hours per week at a rate of time and half.
27.	Pension Scheme	That a proper contributory pension scheme be introduced
28.	Reserve Clause	The Union reserves the right to amend its claim during clarification meeting.
29.	General	All other items not mentioned shall remain as is.



Several meetings were held at the local level, but the parties were unable to arrive at an agreement regarding all the claims and as such the intervention of the Ministry of Labour and Social Security was sought. Despite conciliatory efforts no agreement was reached on the outstanding claims. Consequently, the matter was referred to the Industrial Dispute Tribunal for determination and settlement. At the time of referral, the Honourable Minister of Labour and Social Security noted that continuous industrial action was taking place and requested that action be taken under Section 12(5) of Labour Relations and Industrial Disputes Act.

THE UNION'S CASE:

Mr. Vincent Morrison presented the case on behalf of the Union and advised the Tribunal at the commencement of the hearing that the only agreed item between the parties was the duration of the agreement from November 3, 2017 to November 2, 2019. The Union called six (6) witnesses in support of its case. The witnesses were Mr. Maurice Harrison, Junior Surveyor, Mr. Garth Cheese, Equipment Operator and Chief Union Delegate, Mr. Barrington Wilks, Millwright and Deputy Chief Delegate, Mr. Michael Edwards, a maintenance worker from the Kirkvine plant, Mr. Clifford Carlton Campbell, a Plant Operator and Mr. Peter Onfroy, a former Chief Delegate and former employee of Winalco, when it was owned by Alcan.

The Union's witnesses through their various testimonies gave evidence in support of the claim. They justified their claim for increases in wages and salaries and improved benefit on the basis that the level of wages and benefits were lower since the Company's reopening in 2010. They stated that the level wages/salaries and benefits were lower than other bauxite/alumina companies in Jamaica. They also indicated that the Jamaican currency was constantly being devalued, while the rate of inflation had increased.

The workers stated that the excess payment could not compensate for the time worked. They wished for this to be discontinued. Instead, they want payment for Overtime, Sunday Premium, Shift Premium, Call Out/Call Back and Public Holidays when worked. The workers also spoke of the inadequacy of the travelling allowance, the uniform allowance and the laundry allowance.

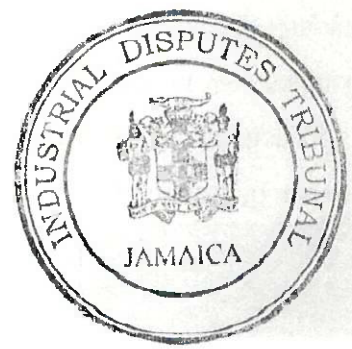


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They also petitioned for educational assistance, end of service employment (EOSE), unusual discomfort allowance, improved vacation leave, lunch subsidy, meal allowance, life insurance, motor vehicle revolving loan fund, revolving loan fund, housing, the extension of the health plan to temporary and casual workers, an improved signing bonus and the reintroduction of a pension scheme. The workers expressed their dissatisfaction with the terms of their fixed term contracts, in particular the term related to redundancy payment. They insisted that they had been forced to sign the contract. The Chief Delegate, Mr. Cheese, insisted that the Company fixed things (production/sales/accounting) to make it look like they were losing. Several workers spoke of industrial action which was taken in 2019, as not being related to the claims for 2017/2019, but rather to the non-implementation of the former IDT Award.

THE UNION'S CONTENTIONS:

1. UC Rusal Alumina Jamaica Limited has made over \$30 Million USD profit in 2018. The parent company also made substantial profit to the tune of millions of dollars. The decrease in rates of pay and benefits by 40% when the plant reopened in June 2010 is highly unfair to the employees. The union contends that the terms and conditions should not be less or inferior to the terms and conditions existing at the time when the plant was closed in 2008. The terms and conditions paid to the UC Rusal Alumina Jamaica Ltd. Workers are paid well below current rates and benefits paid to the workers at Noranda Bauxite Company and Jamalco. They argued that the parity in the rates and benefits in the bauxite and alumina industry should be restored.
2. The waiver of the Bauxite Production Levy between 2010 and 2018 have provided for the Company necessary economic space, financial capabilities and the ability to adjust the wage rates and benefits in line with Noranda and Jamalco. The production and productivity levels at UC Rusal Alumina Jamaica Limited since the plant reopened have been excellent. Production targets have been met on a regular basis and this should provide the platform for better wages and incentives for the workers.

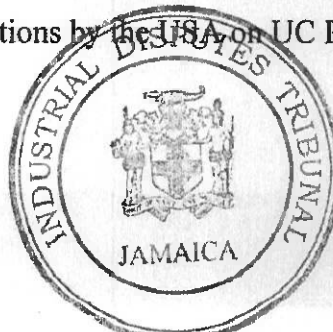


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3. The non-payment of overtime rates, payment for public holidays at premium rates, notice and redundancy payments, shift premium, discomfort allowance and end of service earnings (EOSE) is a most retrograde step within the context of the industrial relations landscape not only in the bauxite and alumina industry but in Jamaica and the wider Caribbean.
4. The devaluation of the Jamaican Dollar, the waiving of the Bauxite Production Levy, the gradual increase in the price of the metal bauxite and alumina has set the stage for a sound economic rebound of the industry locally and internationally.
5. The accumulated inflation rate between 2010 and 2018 exceeds 45% and this fact has certainly eroded the purchasing power of the employees thus creating extreme hardship and difficulty for the employees and their families.
6. The loss posted by the company are paper losses and not genuine, using creative methodology in showing losses to avoid paying decent wages to the workers and taxes to the Government coffers. The Company has not indicated to the Tribunal how it has been compensated for the losses over the years and how it has been able to survive in business over the period. The Union concludes therefore that the losses were taken care of by the parent Company only because the prices for alumina traded between UC Rusal Jamaica Limited and RTI were not at arm's length. The RTI prices at 14% London Metal Exchange (LME) is significantly lower than the open market.
7. The Company's reliance on the national interest as a justification for making no award must be seen for what it is, a cynical play on the anxieties of Government, Tribunal and Union alike, to ensure that nothing is done that will harm the industry, which is so vital to the nation.

THE COMPANY'S CASE:

The Company called three (3) witnesses in support of its case. Mr. Leonid Stavitskiy, Managing Director of the Company, testified in chief that the Company's position was an inability to pay the claim. The Company's audited financial statements for the period 2011 to 2018 confirmed the Company's losses. There was the imposition of sanctions by the USA on UC Rusal from April 2018 to January 2019.



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Sanctions affected cash flow, banking relationships and the supply of equipment and spare parts. Due to restricted cash flow resulting from the imposition of sanctions from April 2018, all capital investment projects at the Company were suspended. The projects affected included the construction a new haul road. Without that road, the Company cannot get to mine good bauxite. During the period of sanctions, the alumina price skyrocketed. After the sanctions were lifted in January 2019 and UC Rusal products began joining the world market, the prices went down. Since the sanctions were lifted, the prices have continued to go down month by month. In April 2019 there was industrial action by the Union. The refinery was shut down during the period of the industrial action. The Company has prepared a costing of the Union's claim. The total increase in \$12 million USD per year or \$24 million USD over two years. This increases the production cost per tonne by \$20.00 USD.

During cross-examination he stated that the bauxite levy was waived between 2011 and 2018. The Company made a profit before taxation in 2017. After taxation there was a loss. He disagreed with the suggestion that the revenue prices under the RTI were not at arm's length, as the revenue prices reflect the market price in the Atlantic market. When he was re-examined, he stated that before UC Rusal took over the Winalco, Glencore's pricing formula for alumina was 12.5% of LME.

Mr. Alexey Zaytsev, Finance & IT Director of the Company since 2015, testified in chief that the RTI agreement fixed the price mechanism for the alumina sold by the Company to RTI at 14% of the LME price for aluminum. He gave evidence in relation to the reduction of the price of alumina for the period September 2018 to September 2019. He forecasted that from 2020 onwards the alumina prices will trend lower due to alumina surplus. He prepared a cost analysis of the Union's claim and stated that the increase in labour cost would increase the cost per ton by \$20.00 USD. The changes in payroll since 2015 has increased the total payroll by 36.71%. During cross-examination he disagreed with the suggestion that the financial accounts presented were artificial and deliberately contrived.



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He stated that the productive incentive bonus was achieved once in 2019, 5 times in 2018 and 6 times in 2017. He insisted that the Company's losses were not a result of the arrangement with RTI but because of the market. He disagreed that the RTI agreement was not at arm's length.

The third witness was Mr. Glendon Johnson, the Company's HR Director. He testified in chief that the Company closed down in 2009 due to the global financial crisis. All employees entitled to redundancy received a redundancy payment. After reopening, some workers were re-engaged on two-year, fixed term contracts. There is an excess hours payment in the contract. The payment of excess hours to compensate for overtime was not peculiar to the Company, as Noranda also had that feature in its contracts. He stated that the Union's claim was high. In terms of cost, the Company would not be able to meet the claim based on the Company's audited financial statements. The concept of a signing bonus was that it was an incentive to have quick settlement to labour negotiations. The customary conditions for a signing bonus did not exist here. Even in the good old days, temporary and casual workers did not have health insurance. There was industrial action in the course of 2019. If the plant were to close it would be catastrophic to the community. Sustainability and viability of the company was paramount to the national interest. During Cross examination He disagreed that the closure in 2010 was to get rid of the benefits being paid to workers.

THE COMPANY'S CONTENTIONS:

1. That the Union has raised grievances which are not the subject of any claim, namely complaints about bathroom and canteen facilities in the mines, safety gears and sick leave in relation to temporary or casual staff. These items were never claimed and are therefore not before the Tribunal. To entertain same when they are not items of claim is not only highly unfair to the Company, but also creates a jurisdictional problem as these items are not part of the dispute referred to the Tribunal by the Ministry of Labour and Social Security ("the Ministry") for settlement.



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2. Pursuant to Section 12(7)(a), the Tribunal is precluded from making an award as to conditions of employment, which are inconsistent with any enactment that regulates or controls such terms and conditions. Further, Section 12(7)(b) bars the Tribunal from making an award which is inconsistent with the national interest.
3. The indexation of wages to the US Dollar is not supported by domestic legislation and would contravene the policy of the Jamaican Government.
4. The Company's position is that:
 - (a) The audited and unaudited financial statements submitted to the Tribunal confirm that the Company has sustained substantial losses since re-opening Ewarton in 2010.
 - (b) No challenge has been made to the fact of these losses by the Union, instead the Union has acknowledged same in its Brief.
 - (c) Based on the evidence, these losses have been accepted as fact by the Government of Jamaica. The GOJ accepted the fact of the losses not only during the period when it owned a 7% share in the Company, but even after it sold its interest. This is demonstrated by the fact that pursuant to the Company's audited financial statements, the Government accepted and carried over the losses as a business loss to subsequent tax years.
 - (d) Given the continued losses sustained since re-opening the Ewarton plant in 2010, the Company is unable to provide increases to salary and other monetary items of claim and an award compelling it to do so would be detrimental to its continued viability, and therefore inconsistent with the national interest and in breach of Section 12(7)(b) of the LRIDA.
 - (e) The losses for the period from 2010 to the date of the Tribunal's last award in August 2018 were accepted by the Tribunal and ought to be consistently accepted by this Panel. An examination of the Company's financial statements for the succeeding period November 2017 to November 2019, demonstrates the continuing inability of the Company to meet the claims.



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- (f) The Company's position since the last wage dispute has in fact worsened, given the continued drop in the prices of aluminum and alumina on the world market, the sanctions imposed in 2018 on the Company and the industrial action taken in 2019 by the workers represented by UCASE.
- (g) A number of the items of claim contained in the Union's proposal are regulated and controlled under the laws of Jamaica and that being so the Tribunal should not make an award inconsistent with same as is stipulated by Section 12(7)(a) of the LRIDA.
- (h) Further, many of the Union's items of claim concern matters which fall entirely within the power, authority or prerogative of management ("the rights of management") and are therefore, non-arbitral items which ought not to be disturbed by the Tribunal. The exercise of management's right is not capable in law as being classified as a "dispute" and the Tribunal should exercise its discretion to make no award in respect of same.

THE TRIBUNAL'S FINDINGS AND RESPONSE:

The Tribunal carefully deliberated on the evidence submitted by both parties.

AWARD:

Item #1 Duration

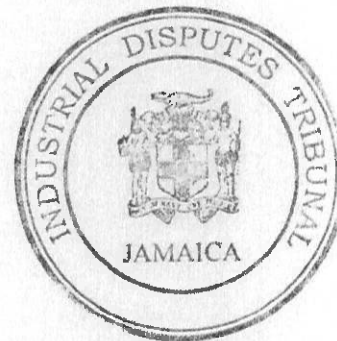
The duration of this contract shall be for two (2) years commencing November 3, 2017 to November 2, 2019

Item #2 Wages and Salaries

An increase of 4% in year 1 and 4% in year 2.

Item # 5 Travelling Allowance

There shall be a travelling allowance of \$8,000.00 per month.



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Item #6 Uniform

Four shirts (4) and three pants (3) per annum effective Year 2.

Item #9 – Laundry Allowance

\$2,750.00 per week

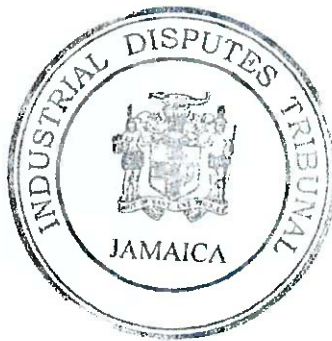
Items 3, 4, 7, 8 & 10-29

No Award

DATED THIS 13th DAY OF AUGUST 2020

Marsha Smith

Miss Marsha Smith
Chairman



Leslie Hall

Mr. Leslie Hall, J.P.
Member

Clinton Lewis

Mr. Clinton Lewis
Member

Witness:

[Handwritten signature of Gary Ledgard]

Mr. Gary Ledgard
Secretary to the Division