

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 14/2023

SETTLEMENT OF DISPUTE

BETWEEN

UNION ONE EXPRESS LIMITED

AND

DEBBIE-ANN SMITH

AWARD

I.D.T. DIVISION

MRS. SHARON ANDERSON	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
DR. DENESE MORRISON, JP.	-	MEMBER

OCTOBER 18 , 2024

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**UNION ONE EXPRESS LIMITED
(THE COMPANY)**

AND

**DEBBIE-ANN SMITH
(THE DISMISSED WORKER)**

REFERENCE:

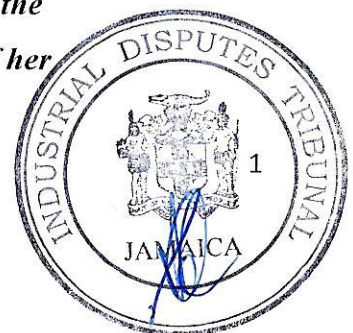
By letter dated April 19, 2023, the Honourable Minister of Labour and Social Security pursuant to Section 11A(1)(a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

“To determine and settle the dispute between Unionone Express Limited on the one hand, and Debbie-Ann Smith on the other hand, over the termination of her Contract of Employment.”

By letter dated October 3, 2024, the Terms of Reference was amended by the Honourable Minister of Labour to read as follows:

“To determine and settle the dispute between Union One Express Limited on the one hand, and Debbie-Ann Smith on the other hand, over the termination of her 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:

- Mrs. Sharon Anderson - Chairman
- Mrs. Jacqueline Irons, J.P. - 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:

- Mr. Dillon D. Doyle - Industrial Relations Consultant
- Ms. Jonalisa Brooks - Group General Manager
- Ms. Sabrina Bembridge - Legal & Compliance Officer

The **Dismissed Worker** was represented by:

- Mr. Howard Duncan - Industrial Relations Consultant

In attendance was:

- Ms. Debbie-Ann Smith - Dismissed Worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during fifteen (15) sittings held between June 8, 2023 and April 24, 2024.

BACKGROUND TO THE DISPUTE:

Union One Express Limited (*hereinafter referred to as the Company*) was incorporated under the Companies Act of Jamaica and has its registered office at 43 Eastwood Park Road, Kingston 10, in the parish of St. Andrew. The Company offers air and sea freight shipping services between Miami, USA and Jamaica. It also offers ground delivery services to transport packages from one location to another.



Ms. Debbie-Ann Smith was employed by Union One Express Limited as Operations Manager on a one year fixed-term contract effective September 29, 2014. Her contract was subsequently renewed in 2015 and 2016.

In November 2016, the Company discovered that Ms. Smith registered a competing business with the Companies Office of Jamaica. As a result of this discovery, Ms. Smith's contract of employment was terminated by way of letter dated December 13, 2016.

Ms. Smith disagreed with her termination and engaged the services of Mr. Howard Duncan, Industrial Relations Consultant, who sought the intervention of the Ministry of Labour and Social Security. No resolution was reached, and subsequently, the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE:

1. The Company called two (2) witnesses in support of its case. The first witness was Ms. Kemba Stewartson, Accounts Manager between 2015 and 2019.
2. Ms. Stewartson's testified that Ms. Smith incorporated a company, Coombs Logistics, and she assisted her pro bono to get a Tax Compliance Certificate (TCC) in an effort to start the competing business. She stated that she did it as a friend. Ms. Stewartson said she supported the idea of Ms. Smith having a business but told her she should not carry out same while at Union One Express Limited.
3. It is Ms. Stewartson's evidence that Mr. Campbell, CEO of Union One Express Limited, carried out an investigation that proved that Ms. Smith had a Registered Company. She stated that a prior incident occurred, which resulted in trackers being placed on all company vehicles. She informed the Tribunal that an internal audit was conducted by her team, and it revealed that a particular bearer and a company vehicle were used to carry out Ms. Smith's personal business.



4. The Company's second witness was Mr. Lloyd Campbell, the Chairman and CEO of Union One Express Ltd. He told the Tribunal that Ms. Debbie Ann Smith was employed by the Company as Operations Manager on a one year fixed-term contract, which was subsequently renewed in 2015 and 2016.
5. It is Mr. Campbell's evidence that he told Ms. Smith that he wanted to expand the business to sea freight, and he asked her if she knew anyone that would be interested. She told him that she would think about it. She later recommended Mr. Gauntlett Dwyer for the job.
6. Mr. Campbell testified that due to the fact that he was constantly having dishonest employees and was not present most time in office, he had a '*hinge man*.' He was informed by the '*hinge man*' that Ms. Smith was using the Company's vehicle along with the gentleman that she brought in and one of the Company's driver to do separate work from that of the Company. Consequently, he hired a private investigator to investigate Ms. Debbie Ann Smith as he felt that Ms. Smith was at the time an immediate threat to his business.
7. Mr. Campbell testified that in November 2016, the Company discovered that:
 - Mr. Gauntlett Dwyer, who was employed to Union One Express Limited as a consultant and had been recommended by Ms. Smith, was the Registered Business Partner of Ms. Smith in the Company, Coombs Logistics Services.
 - the business, Coombs Logistics Services was registered with the Companies Office of Jamaica on September 9, 2015, "*to carry on business for ground courier, trucking, haulage, import and export services and wholesale distribution*" which would be competing with Union One Express Limited. The registration of the Company, Coombs Logistics was not disclosed to Union One Express Limited as was required per Ms. Smith's contract of employment.
 - Coombs Logistics had been using Union One Express Limited's resources, customer data, company vehicle and staff in the execution of its activities.
8. The Company stated that Ms. Smith was in breach of the terms and conditions as outlined in her contract of employment, specifically the following provisions:



“OTHER EMPLOYMENT

You shall not at any time during your employment with us act in any manner or business for any person or company other than this company and shall not engage either as principal servant or agent whatsoever without express approval of the company.

CONFIDENTIALITY

You agree in the proper course of your duties not to divulge to any person or company any information relating to the company’s business and to use your best endeavors to prevent the unauthorized publication or disclosure of any confidential information concerning the business of finances of this company.”

9. It is the Company’s submission that by letter dated November 22, 2016, Ms. Smith was placed on administrative leave for an initial period of two (2) weeks effective November 23, 2016 so as to allow for the investigations. This was extended for a further week due to the nature and complexity of the investigations and to facilitate and determine the full extent of the suspected breach.

10. Mr. Campbell also provided the Tribunal with a Loan Agreement dated August 31, 2016, between Ms. Smith and First Union Financial Co. Ltd., which is affiliated with Union One Express Limited. The agreement states: *“the entire balance of this loan shall become due and payable if there is a dismissal, lay off, resignation or any other circumstance that may cause me to leave my job. I therefore authorize you to remit the balance owing on this schedule to the above mentioned company from all monies owing to me...”*

11. The Company tendered an email dated December 23, 2016, which was sent to Ms. Smith showing that although she did not receive any pay in hand, she was, informed that her November and December pay for 2016 were put towards monies owed to First Union Financial, leaving a balance on the loan. Therefore, the Company submitted that it is entitled to deduct the full balance of Ms. Smith’s outstanding loan to First Union Financial Company Limited from any settlement arrived at.

12. Mr. Campbell produced an email dated December 7, 2016 written by Ms. Smith on the last day of her initial suspension denying her involvement in a competing company. She stated in the email



that she registered a business name for her husband, who had planned to return from overseas to start his own distribution company. She also stated that she tried to get him a loan to start the business, but the loan was not granted. As a result of him not getting the loan, she closed the business. Further in the email, she went on to say that the distribution business would have been the start to Union One Express ocean business. Union One Express would have benefitted from all aspects, earning from the freight, the destination fees, and the brokerage fees for the clearance. In addition, she told him that online shopping and courier services would become a thing of the past. She advised him to take a look at what is happening in the market and that there is no way Union One Express could survive in another year. She went on to say that *'what she was trying to do was to build the ocean freight arm to generate additional income for the business. Gone are the days where people think they have the key to survival in business. If you don't merge to win, then you stand alone to fail.'*

13. Mr. Campbell spoke to the fact that First Union Financial Company (a company within the group of companies that Union One Express is a part of) had a history of fraud and collusions within the same period of time. There was a twenty four (24) million dollar fraud for which employees were arrested. He said the Company had bills to pay, and with so many things happening regarding employees, he could not take the chance with Ms. Smith remaining in his employment as it was just too risky to do so.

14. The Company accepts that it did not follow the proper procedures in terminating Ms. Smith's contract of employment. However, the Company contends that it acted within its rights to terminate Ms. Smith's contract of employment because of the nature of the business and the position she occupied. Ms. Smith had access to sensitive information, and due to such access, she was required by the Company to sign a Declaration of Secrecy. A certain level of trust and confidence was placed on her, and when this trust was breached, it made her position untenable.

THE DISMISSED WORKER'S CASE:

15. The sole witness was the dismissed worker, Ms. Debbie-Ann Smith. Ms. Smith was employed by Union One Express.



16. Ms. Smith testified that she entered into a one year fixed-term contract with the Company for the period September 29, 2014 to September 2015. Prior to the expiration of the initial contract, Mr. Campbell, CEO of Union One Express, expressed satisfaction with her work and told her he would employ her on a permanent basis. The conversation was verbal and Ms. Smith's employment continued up to the time of her termination. However, she did not sign another contract.
17. Ms. Smith contends that the relationship with the Company was a cordial one. She explained that she took a loan dated August 31, 2016 of three hundred eighty three thousand five hundred dollars (\$383,500.00) with monthly deductions of thirty one thousand nine hundred and fifty eight dollars and thirty three cents (\$31,958.33) as per the loan agreement.
18. By letter dated November 22, 2016, Ms. Smith was placed on suspension for a period of two (2) weeks without pay effective November 23, 2016. She was informed by the Company that it was as a result of her involvement with some apparent irregularities. This, the Company claimed, resulted in a conflict of interest, which became the subject of an investigation.
19. By email dated December 7, 2016 from Ms. Smith to the Company she indicated that December 6, 2016 marked the last day of her two week suspension. She stated that she is not a business proprietor for another company and she has documentation to verify that she has no active business. She went on to say in the email that she only registered a business for her husband on September 9, 2015, who had planned to return from overseas to start his own distribution business. She further indicated that she did this for him and included a friend who is knowledgeable to assist him. She stated that he could not get a loan, and so she tried to get one on his behalf. When the loan wasn't granted, her husband opted to venture into something much easier, and hence, she subsequently closed the business name on September 30, 2016. She stated that Ms. Stewartson was the only one who knew about the business as she assisted her in getting the TCC; however, what Stewartson didn't know was that she terminated the business.
20. By letter dated December 13, 2016, over the signature of Ms. Sophia Blair, Human Resource Manager, the services of Ms. Smith were terminated.



21. **The Dismissed Worker contended that:**

1. she committed no offence.
2. she was disciplined by Sophia Blair as she was suspended without pay.
3. her services were terminated without a fair and proper disciplinary hearing.
4. she was charged by Ms. Sophia Blair, Human Resources Manager who terminated her contract of employment which voids the termination as it is in breach of the principles of natural justice.
5. she was disciplined twice for the same offence.
6. the Company breached Paragraph 22 of the Labour Relations Code.

22. Ms. Smith sought an appeal hearing with a view to have the Company reinstate her without any loss of pay. However, she was denied the right of an appeal.

THE TRIBUNAL'S FINDINGS:

23. The questions that the Tribunal asked itself:

1. Did Ms. Smith breach her contract of employment?
2. Was there a conflict of interest?
3. Was Ms. Smith punished twice for the same action (double jeopardy)?
4. Did the Company adhere to fair industrial relations practices?



1. Did Ms. Smith breach her contract of employment?

24. Ms. Debbie- Ann Smith's contract of employment speaks to the following provisions:

OTHER EMPLOYMENT

"You shall not at any time during your employment with us act in any manner or business for any person or company other than this company and shall not engage either as principal servant or agent whatsoever without express approval of the company."

CONFIDENTIALITY

"You agree in the proper course of your duties not to divulge to any person or company any

information relating to the company's business and to use your best endeavors to prevent the unauthorized publication or disclosure of any confidential information concerning the business of finances of this company."

25. Ms. Smith also signed a DECLARATION OF SECRECY and DECLARATION OF CONTRACT OF SERVICE with the Company which states that, *"I also undertake not to be engaged or concerned directly or indirectly in any other business or occupation whatsoever, except with the written consent of the Directors of Management. I understand that any breach of this provision will entitle the Company to terminate my services without notice"*
26. The Tribunal found that Ms. Smith breached her contract of employment by acting a principal servant when she registered a competing business without express approval by the Company while still in the employ of Union One Express Limited as an Operations Manager. In addition, Ms. Smith also violated the terms and conditions of the Declaration of Secrecy and the Declaration of Contract of Service when she failed to obtain a written consent from the Directors of Management prior to her engagement in another company.

2. Was there a conflict of interest?

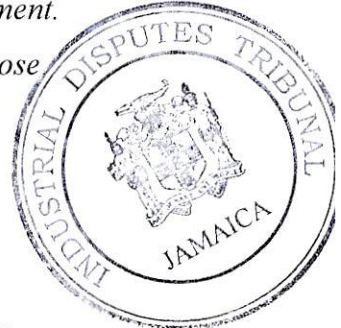
27. The undisputed evidence before the Tribunal is that Coombs Logistics was registered as a partnership under the Registration of Business Names Act of Jamaica on September 9, 2015, with the proprietors Debbie-Ann Leonie Smith & Gauntlett Obrain Dwyer, as carrying on the business of "Ground Courier, Trucking, Haulage, Import & Export Services & Wholesale Distribution". A clear indication that the business was owned and operated by Ms. Smith and Mr. Dwyer and not her husband, as she would have wanted this Tribunal to believe. Coombs Logistics, was therefore, in direct competition with Union One Express Limited resulting in a conflict of interest. This, the Tribunal believes was a well orchestrated plan by both Ms. Smith and her business partner.
28. In light of the above, the Tribunal must point out that under Section 3(4) of the Labour Relations and Industrial Disputes Act, it is obliged by statute to take this point into consideration, which states:



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

29. The Tribunal finds it very important to refer to Paragraph 6 (iii) of the Labour Relations Code:

“Some workers have special obligations arising out of the nature of their employment. Such worker when acting in the course of his employment should be mindful of those obligations and should refrain from action which conflicts with them.”



3. Was Ms. Smith punished twice for the same action (double jeopardy)?

30. The Tribunal finds that Ms. Smith was not placed on administrative leave as the Company claimed but rather on suspension. By not having Ms. Smith on site while the investigations were taking place allowed the Company the opportunity to probe “the irregularities” mentioned and complete a thorough investigation. Notwithstanding the Company’s letter stating that Ms. Smith was suspended without pay to allow for a complete investigation, the unchallenged evidence before this Tribunal is that Ms. Smith’s November and December 2016 salary was paid on the loan she was owing to First Union Financial Group. Ms. Smith signed a Loan Agreement dated August 31, 2016 which authorizes the Company to recover the outstanding loan amount from whatever monies the Company had for her.

31. The Tribunal, therefore, concludes that there was no double jeopardy as Ms. Smith was not penalized twice for the same offence.

4. Did the Company adhere to fair Industrial Relations practices?

32. The Tribunal is mindful of the evidence of Mr. Campbell that it was too risky to allow Ms. Smith to continue working with the Company. Mr. Campbell testified that he was scared, ‘paranoid’ and

he did what he thought was right for his Company at the time. Mr. Campbell's evidence is that within the Group of Companies for which he was the CEO, there was a history of fraud and collusions involving employees. He stated that there was a twenty four (24) million dollar fraud for which employees were arrested, hence, he could not take the chance with Ms. Smith remaining in his employment as it was just too risky to do so.

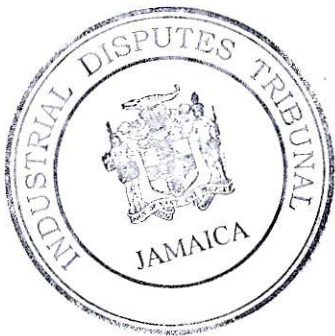
33. The Tribunal notes that despite the compelling evidence, Ms. Smith denied that she was involved in a competing company, thus displaying a behaviour which was egregious and unacceptable. The Tribunal, however, in coming to its decision must take into consideration the statutory requirement.

34. Accordingly, the Tribunal accepts that the Company may have had cogent reasons to dismiss Ms. Smith. However, the Tribunal finds no evidence to contradict the contention of the dismissed worker that the Company failed to observe the provisions of the Labour Relations Code as set out in Paragraph 22 when Ms. Smith's contract of employment was terminated. Paragraph 22 of the Labour Relations Code states that:

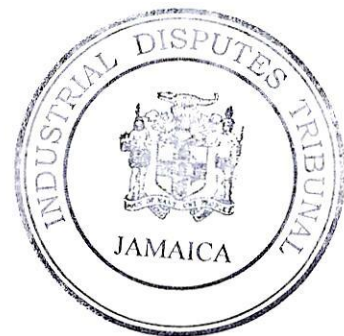
“Disciplinary Procedure

(i) Disciplinary Procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:

- (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 representatives;*
- (d) provide for a right of appeal, where ever practicable to a level of management not previously involved;*
- (e) ...”*



35. The Tribunal accepts the evidence of the dismissed worker that she was not provided with notice nor did she receive payment in lieu of notice as there was no evidence by the Company to substantiate same.
36. The Tribunal is also mindful of the fact that Ms. Smith mitigated her circumstances as she was employed by three different companies since her dismissal. The Tribunal, in coming to its decision, also took into consideration the fact that she had an outstanding amount owing on the loan she had borrowed.
37. Therefore, we find the dismissal of Ms. Smith to be *unjustified*. However, the Tribunal having regard to all the evidence presented cannot ignore the fact that Ms. Smith contributed vastly to her dismissal and hence awards accordingly.




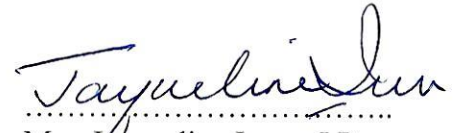
THE AWARD:

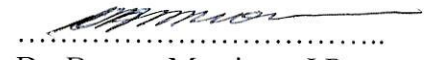
38. In keeping with the provisions of Section 12 (5)(c) of the Labour Relations and Industrial Disputes Act (LRIDA), the Tribunal awards that Ms. Smith be compensated in the amount of Three Hundred and Fifty Thousand Dollars (\$350, 000.00) for her unjustifiable dismissal.

DATED THIS 10th DAY OF OCTOBER, 2024





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Mrs. Sharon Anderson
Deputy Chairman


.....
Mrs. Jacqueline Irons, J.P.
Member


.....
Dr. Denese Morrison, J.P.
Member

Witness


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Royette Creary
Secretary to the Division