

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: 25/2022

SETTLEMENT OF DISPUTE

BETWEEN

PALACE AMUSEMENT CO. LIMITED (1921)

AND

MR. CLINTON CARNEGIE

AWARD

I.D.T. DIVISION

MS. SADEERA SHAW	-	CHAIRMAN
MR. RODCLIFFE ROBERTSON, JP.	-	MEMBER
MR. KEITH FAGAN	-	MEMBER

JANUARY 27, 2025



INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF AN INDUSTRIAL DISPUTE

BETWEEN

PALACE AMUSEMENT Co. LIMITED (1921)
(THE COMPANY)

AND

MR. CLINTON CARNEGIE
(THE AGGRIEVED WORKER)

REFERENCE:

By letter dated July 22, 2022, 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 describe therein:-

The Terms of Reference were as follows:

“To determine and settle the dispute between Palace Amusement Co. Limited (1921) on the one hand, and Mr. Clinton Carnegie on the other hand, over the termination of his employment by reason of redundancy”.



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:

Ms. Sadeera Shaw	-	Chairman
Mr. Rodcliffe Robertson, JP.	-	Member, Section 8(2)(c)(ii)
Mr. Keith Fagan	-	Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Ms. Angella Robertson	-	Attorney-at-Law
Mrs. Gillian Crosskill	-	Resources Development Manager

The **Aggrieved Worker** was represented by:

Mr. Khurt Fletcher	-	Industrial Relations Consultant
--------------------	---	---------------------------------

In attendance:

Mr. Clinton Carnegie	-	Aggrieved Worker
----------------------	---	------------------

SUBMISSIONS AND SITTINGS

Briefs were submitted by both parties who made written and oral submissions during twelve (12) sittings between the period of May 8, 2023, and December 10, 2024.



BACKGROUND TO THE DISPUTE:

1. Palace Amusement Company Limited (1921), *herein referred to as the "Company"*, is a duly registered entity under the Companies Act of Jamaica with its registered office at 1A South Camp Road in the parish of Kingston. The Company originally operated as a private entity and began offering shares to the public in 1921. Over the years, the Company expanded its operations and currently operates in four (4) locations; Carib 5 in Cross Roads, Palace Cineplex in Liguanea, Sunshine Palace Cinema in Portmore and Palace Multiplex 4 in Montego Bay.
2. Mr. Clinton Carnegie, *herein referred to as the "Aggrieved Worker"*, was employed to the Company on December 12, 2009, as a Relief Manager and was later promoted to Assistant Cinema Manager on October 1, 2016. By way of letter dated March 30, 2019, the Aggrieved Worker's employment was terminated by reason of redundancy effective April 27, 2019.
3. The Aggrieved Worker engaged the services of Mr. Khurt Fletcher, Industrial Relations Consultant, who contested his termination and sought the intervention of the Ministry of Labour and Social Security. No resolution was reached and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE

4. The Company made oral submissions and called Mrs. Gillian Crosskill as its sole witness in support of its case. She testified that she has been employed to the Company as Human Resources Development Manager since November 1998. She gave evidence that the Company is in the business of distributing film and operates in four (4) locations namely, Carib 5 in Cross Roads, Palace Cineplex in Liguanea, Sunshine Palace Cinema in Portmore and Palace Multiplex in Montego Bay. She noted that Sunshine Cinema was not in operation at the time of the Aggrieved Worker's employment.
5. She stated that her duties included responsibility for providing personnel services to the staff at the four (4) cinema locations as well as the headquarters. She also has responsibility for recruitment, administration of benefits for terminations (resignation, dismissal and



redundancies), administering the disciplinary code, training, coaching and any other activities as determined by the Managing Director.

6. It is her evidence that she knew the Aggrieved Worker as she had oversight of and was involved in his employment including his promotion to Assistant Cinema Manager. She indicated that he initially held the position of Relief Manager in 2009 and was later promoted to Assistant Cinema Manager in 2016. She testified that the management team at Cinema Multiplex 4 comprised of Resident Manager, Assistant Cinema Manager and Relief Manager.
7. She gave evidence that the Company tried its best to maintain consistencies across all of the cinemas but depending on the circumstances, they were some differences. She stated that she was involved in the Company's strategic planning in 2019 and had continuous dialogue with the Managing Director concerning the structure and composition of the staff. It is her evidence that the Company, at the time, was in the process of building a new cinema so it made sense to examine the other cinemas to ascertain whether there were any discrepancies. From her observation of the cinemas, she explained that she discovered that there were management positions which existed at Cinema Multiplex 4 which didn't exist at the other cinema locations. She noted that the Cinema Assistant Manager position existed at Carib 5 when she started working at the Company thirty-five (35) years ago but the position was eliminated.
8. She testified that the Company was then tasked with deciding whether the Assistant Manager position was appropriate. She gave evidence that she discussed the discrepancy concerning the Aggrieved Worker's position with the Managing Director after she foresaw the possible impact a particular decision would have on the Aggrieved Worker. She stated that there was no discussion with the Aggrieved Worker pertaining to the Company's concern about the management structure at Cinema Multiplex 4. Mrs. Crosskill noted that she was familiar with the Labour Relations Code where it spoke to the Company's right to operate efficiently and to use its resources in an efficient manner. She explained that in her capacity, the term 'resources' meant human resources.



[Handwritten signature]

9. It is her evidence that she arranged a meeting with the Aggrieved Worker to discuss the situation the Company was faced with and that she didn't inform the Aggrieved Worker of the purpose of the meeting beforehand. She indicated that the meeting was held at Cinema Multiplex 4 on March 23, 2019, with herself and the Aggrieved Worker in attendance. She testified that during the meeting, she handed the Aggrieved Worker a letter dated March 22, 2019, which made reference to the Company's decision to eliminate his position as well as to inform him that it was no longer necessary to pursue the issues which led to the holding of a disciplinary hearing concerning him. The letter continued to state that no further action would be taken against him in that regard. With regards to the disciplinary process, she confirmed that the charges were proffered against the Aggrieved Worker and that the Aggrieved Worker was placed on administrative leave and remained on the said leave until the said meeting held on March 23, 2019.
10. It is her evidence that the purpose of the meeting was to discuss with the Aggrieved Worker what the possibilities were given that the Company was planning to eliminate his position. She testified that the Aggrieved Worker asked if he could record the meeting which she agreed. She gave evidence that she continued with the meeting by informing the Aggrieved Worker that the Directors made the decision to restructure. She noted that the decision to eliminate the Aggrieved Worker's position was made prior to March 23, 2019.
11. She testified that she offered the Aggrieved Worker a redundancy package after which the meeting was interrupted by the Aggrieved Worker's phone. She indicated that it was a phone call which the Aggrieved Worker answered and spoke for a while. She further testified that she reminded the Aggrieved Worker that they were in a meeting and that he couldn't be on a phone call. She gave evidence that the Aggrieved Worker informed her that it was his representative and that he (the representative) wanted to join the meeting. She stated that she didn't allow the representative to be a part of the meeting and informed him (the Aggrieved Worker) that he could share the recording with his representative after the meeting was concluded as she was not prepared to answer any questions from a third party. Further, she explained that from her years of experience she had a better first meeting when third parties weren't involved. She continued to state that if a formal meeting was required afterwards, it could be pursued.



12. She noted that due to the above-mentioned interruption she didn't get the opportunity to inform the Aggrieved Worker of the other options. She then indicated that the Aggrieved Worker didn't want to continue the discussion and requested that the remainder of the meeting be placed in writing. She gave evidence that the Aggrieved Worker collected the said letter dated March 22, 2019 and departed soon afterwards which resulted in the meeting ending prematurely.
13. She stated that the alternatives she wanted to discuss with the Aggrieved Worker was the position previously held by him, namely, Relief Manager. It is her evidence that she didn't continue the consultation in writing as requested based on instructions from the Managing Director and she didn't think it would have made a difference. She later explained what she meant when she stated that she didn't think it would have made a difference by stating that she didn't think that the Aggrieved Worker would accept what she had to offer as what she had in mind was not equal or commensurate to the position he held.
14. She testified that she had written communication with the Aggrieved Worker after the meeting via email. In the email thread, Mrs. Crosskill indicated to the Aggrieved Worker that she would send him a letter in short order. She gave evidence that she sent him a letter dated March 30, 2019, detailing his (the Aggrieved Worker's) termination by way of redundancy. She stated that the Company carried out the requirements set out in the Employment (Termination and Redundancy Payments) Act in terminating the Aggrieved Worker. It is her evidence that the Assistant Cinema Manager position hasn't been filled since the Aggrieved Worker's departure and the position does not exist in any of the other locations since his departure. She noted that in the restructuring exercise, the Aggrieved Worker was the only person affected.

THE COMPANY'S CONTENTIONS

The Company contends that:

- a. It made a decision to restructure its operation in early 2019 which resulted in the Aggrieved Worker's position being affected;
- b. It commenced the consultation process as required in meeting held with the Aggrieved Worker on March 23, 2019;



- c. The consultation process prematurely came to an end by the Aggrieved Worker's behaviour in the meeting and his request for any further information to be put in writing;
- d. There isn't any timeline for consultation and where the employee determines that there is no necessity for consultation, there would be no breach committed by the employer;
- e. No alternative position was offered to the Aggrieved Worker because there were no vacancies he could fill; and
- f. The Company asks the Tribunal to make an award that the Company's decision to terminate the Aggrieved Worker's contract of employment by reason of redundancy was justified. If, however, the Tribunal arrives at an alternate view that it takes into consideration that the redundancy payment already made to the Aggrieved Worker was incorrectly calculated resulting in an overpayment and should therefore offset any amount the Tribunal may award.

THE AGGRIEVED WORKER'S CASE

15. In presenting its case, Mr. Khurt Fletcher called the Aggrieved Worker as his only witness. Mr. Clinton Carnegie testified in his examination-in-chief that he was initially employed to the Company as a Relief Manager. He further testified that as Relief Manager, he wasn't required to work every day and that his duties included managing the cinema in the absence of the General Manager and Assistant Manager or in instances where there were major events that required more than one (1) manager on duty. He gave evidence that in 2016 he was promoted to Assistant Cinema Manager where he worked six (6) days per week. He indicated that his duties included assisting with ticket sales, concession sales, stock taking, attendance and record keeping along with any other matter that needed to be addressed as an Assistant Manager. It is his evidence that his compensation package consisted of his salary as well as commission on sales.

16. He gave evidence that his employment with the Company began in 2009 and ended in 2019. He stated that his job at the Company wasn't his sole employment. He continued to detail his employment history outside of the Company where he was employed to Air Jamaica for the period 2006-2010, Xerox for the period 2010-2013 and Amstar for



the period 2013 to present date. It is his evidence that he held full-time employment at the Company and his other employments. It is also his evidence that the Company was aware of his other employments while he was employed to them.

17. He explained that whilst he was engaged in a disciplinary process at the Company, he received a call from Mrs. Crosskill for a meeting. He testified that he attended the meeting on March 23, 2019, in which he asked Mrs. Crosskill if he could record the meeting which was granted. He gave evidence that Mrs. Crosskill handed him a letter and upon reading the letter he realized that the meeting was not what he expected. He expressed that he thought the meeting was about the pending disciplinary matter.
18. He stated that the meeting was about redundancy and that it was his first time hearing about it. He agreed that Mrs. Crosskill informed him that the Company's Directors had decided to reorganize its operation which led to his position being affected. It is his evidence that as a Manager at the Company he was not aware of any issues concerning the Company's operation and that he would have been privy to such information from attending the managers monthly meeting or receiving the minutes from the meetings he didn't attend. He noted that he was also not aware of any inconsistencies with regards to staffing.
19. He testified that he asked if his representative could join the meeting which was denied. He explained it was his right to have his representative present in the same way his representative was present in his disciplinary matter. He later testified that he understood that it wasn't a disciplinary meeting, but he still wanted his representative present to assist him in the discussion. He indicated that Mrs. Crosskill informed him that she wanted to finish speaking with him (the Aggrieved Worker) and he could later convey the information to his representative. He gave evidence that after receiving the letter, he told her that anything else she wanted to present to him he wanted it to be in writing. He stated that Mrs. Crosskill responded that she had more to say to him and she proceeded to inform him of two (2) options she wanted to present.
20. It is his evidence that he was of the view that Mrs. Crosskill finished the meeting because after she informed him of the options, he asked her if she had anything else to say in which she stated no. He indicated that he informed Mrs. Crosskill that he was



not going to answer any questions at that time. He said that he thanked her for her time and left the meeting.

21. He gave evidence that it wasn't the first time he was involved in a redundancy exercise. He stated that from his experience he expected for the Company to present the situation it was facing and to inform the employees that there will be a redundancy exercise. He continued to state that he expected the Company to offer solutions that might alleviate some of the distress that the affected employees might endure once separated from the Company. It is his evidence that he also expected to have more than one (1) session and feedback from him before the Company reached an amicable decision. He was of the view that consultation, as stated in the Labour Relation Code, didn't occur.
22. He testified that he received a termination letter on March 30, 2019 which stated the circumstances in which he was terminated. He agreed that the said letter also indicated that he was entitled to redundancy payment and offered two (2) options concerning notice. He gave evidence that he didn't choose any of the options. He also agreed that the calculated redundancy payment was sent to his account and that he couldn't say that he accepted same as his signature wasn't required nor was he consulted as to whether he agreed to it.
23. He indicated that since being made redundant he has not been able to replace the income he generated from the Company. It is his evidence that he made attempts but based on the flexibility that he had with the Company, he has not been able to replicate it with any other opportunities. He testified that he is still employed to his other employer.

THE AGGRIEVED WORKER'S CONTENTIONS

The Aggrieved Worker contends that:

- a. The Company used the redundancy exercise as an excuse to terminate him when it realized it could not succeed via the disciplinary process;
- b. There was no consultation as required by the Labour Relations Code; and
- c. The Aggrieved Worker asks the Tribunal to find that his termination was unjustifiable and to make an award of reinstatement with no loss of income from the date of termination and commission that he would have earned during the period.



THE TRIBUNAL'S RESPONSE AND FINDINGS

24. The Tribunal, after careful examination of the evidence adduced by both parties to the dispute, must determine whether the Company was justified in the termination of Mr. Carnegie's employment by reason of redundancy.
25. It was the Company's evidence that during the process of constructing a new cinema, the Company underwent an examination of its staffing in its existing cinemas. It was at that time, management discovered that there was a discrepancy in the management team at the cinema located in Montego Bay. Specifically, the Company discovered that the position, Assistant Cinema Manager held by the Aggrieved Worker, didn't exist at the other cinema locations. As a result, the Company was tasked to make a decision concerning the Aggrieved Worker's position.
26. It was submitted by the Company that in an effort to utilize its human resources efficiently, it made the decision to terminate the Aggrieved Worker's position by reason of redundancy due to the position being no longer viable in its operations and no longer existed at the other cinema locations. The Company buttressed its submission by referencing paragraph 2 of the Labour Relations Code which states:

"...Recognition is given to the fact that management in the exercise of its function needs to use its resources (material and human) efficiently."

The Tribunal notes that the said paragraph of the Labour Relations Code continues as follows:



"Recognition is also given to the fact 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, ensuring continuity of employment, security of earnings and job satisfaction."

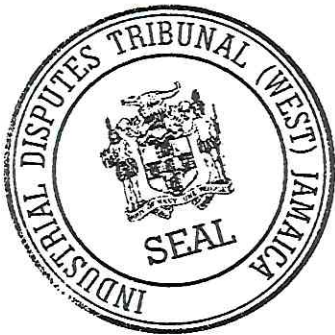
27. In determining whether the Aggrieved Worker's termination was justifiable by reason of redundancy, the Tribunal looked at the governing law concerning redundancies, namely the Employment (Termination and Redundancy Payments) Act 1974. In s. 5 of the said Act, it sets out the pre-requisites for a genuine redundancy exercise. Based on the above-mentioned evidence provided by the Company, the Tribunal finds that the

Company provided cogent evidence/reasons to justify its decision to terminate the Aggrieved Worker by reason of redundancy.

28. With that said, the Tribunal must also examine the procedures undertaken by the Company in the process of terminating the Aggrieved Worker. The Company, in its evidence, stated that a meeting was held with the Aggrieved Worker on March 23, 2019, to inform him of its decision to make his position redundant and to have consultations in accordance with the Labour Relations Code. The Tribunal finds it noteworthy to highlight paragraph 11 of the Labour Code which guides the Tribunal as to what is required in the event of a redundancy exercise. It states:

“Recognition is given to the need for workers to be secure in their employment, and management should in so far as is consistent with operational efficiency:

- (i) provide continuity of employment, implementing where practicable, pension and medical schemes;*
- (ii) in consultation with workers or their representatives take all reasonable steps to avoid redundancies;*
- (iii) in consultation with workers or their representatives evolve a contingency plan with respect to redundancies so as to ensure in the event of redundancy, that workers do not face undue hardship in this regard, management should endeavour to inform the worker, trade unions and the Minister responsible for labour as soon as the need may be evident for such redundancies;*
- (iv) actively assist workers in securing alternative employment and facilitate them as far as is practicable in this pursuit.”*



29. With regards to consultation referenced above, the Company submitted that the purpose of the meeting on March 23, 2019, was for the parties to engage in the required consultation. It was also submitted that said efforts to have consultation ended prematurely by the conduct of the Aggrieved Worker when he interrupted the meeting to have a telephone discussion with his representative as well as leaving the meeting after requesting for any further information to be placed in writing.

30. Whilst it was argued by the Aggrieved Worker that he was not informed of the purpose of the meeting on March 23, 2019, and thought that the meeting concerned the pending disciplinary matter against him. The Tribunal accepts the Aggrieved Worker's evidence that it was at the meeting of March 23, 2019, that the Aggrieved Worker was informed of the Company's decision to eliminate his position and no longer pursue the disciplinary action against him (*exhibit 6*). It was admitted by the Aggrieved Worker that he had a telephone conversation with his representative during the meeting and requested for his representative to join which was denied but he received permission to record the meeting instead.
31. It was Aggrieved Worker's submission that he listened to what Mrs. Crosskill had to say in the said meeting, informed her that he would not answer questions at the time and requested for the information to be placed in writing. Based on the evidence provided (*exhibit 8a and 8b*) the information the Aggrieved Worker requested in writing concerned his entitlement under the Employment (Termination and Redundancy Payment) Act which Mrs. Crosskill asked him to make a choice.
32. The Tribunal finds that the approach taken by the Company to inform the Aggrieved Worker of its decision to make his position redundant and at the same time inform him of the Company's decision to no longer pursue disciplinary action against him makes the redundancy seem spurious. This approach also placed the Aggrieved Worker in an unfair position where he was not prepared to have any meaningful discussions concerning the redundancy.
33. The Tribunal also finds that the Company failed to empathize with the Aggrieved Worker who was taken by surprise by a decision to eliminate his position, a decision to forego disciplinary action against him and an expectation for him to decide on notice in one meeting. In addition, consideration was given to the fact that the Aggrieved Worker was on administrative leave at the time and was not privy to any prior communication (if any) concerning a redundancy exercise.
34. The Labour Relations Code further breaks down what is expected from consultation in paragraph 19(b) where it states:



“Consultation is the joint examination and discussion of problems and matters affecting management and workers. It involves seeking mutually acceptable solutions through a genuine exchange of views and information. Management should take the initiative in establishing and regularising consultative arrangements appropriate to the circumstances of the undertaking in co-operation with the workers or their representatives



- (i) *Management should ensure that in establishing consultative arrangements:*
- (a) *all the information necessary for effective consultation is supplied;*
 - (b) *there is adequate opportunity for workers and their representatives to expose their views without prejudicing their positions in any way;*
 - (c) *senior members of management take an active part in consultation;*
 - (d) *there is adequate opportunity for reporting back.”*

35. The evidence showed was that Mrs. Crosskill indicated to the Aggrieved Worker in the meeting that she had two (2) things she needed to discuss with him. Firstly, to give him the letter informing him of the decision to eliminate his position as well as to inform him that the Company will no longer pursue disciplinary action and secondly, to inform him of his entitlements under the Employment (Termination and Redundancy Payment) Act concerning notice. The Tribunal is of the view that the Company was more interested in the Aggrieved Worker making a decision concerning notice than engaging the Aggrieved Worker in consultation.

36. The Tribunal finds that the meeting held on March 23, 2019, may have ended prematurely but the Tribunal does not accept the Company’s submission that the consultation process also ended. As stated in the above-mentioned paragraph of the Code, the Company has a responsibility in establishing and regularizing consultative arrangements appropriate to the circumstances. No evidence was provided to the Tribunal that the Company initiated consultation as was envisioned by the Labour Relations Code in the meeting.

37. It is to be noted that it was the Aggrieved Worker who initiated communication with the Company after the meeting via email on March 24, 2019, (*exhibit 2a*) seeking clarification on the elimination of his position as the letter given to him at the meeting

didn't detail how the elimination of his position affected his employment. The Tribunal finds that such an email showed the Aggrieved Worker's interest in continuing the discussion concerning his position. The Company responded on March 25, 2019, to the effect that the Company was in the process of responding in writing in the form of a letter as he requested. The said letter from the Company in response to the Aggrieved Worker's request for clarification was a termination letter.

38. The Tribunal finds that the Company, in responding with the termination letter, missed their opportunity to engage in consultation to discuss any possible ways to avoid the said redundancy, redeployment and to receive the Aggrieved Worker's feedback on the redundancy. As such, the Tribunal is of the view that it is the Company who ended the consultation prematurely by issuing the termination letter as the Company's formal response to the Aggrieved Worker after the meeting held on March 23, 2019.
39. The Tribunal finds that the manner in which the Aggrieved Worker was dismissed by reason of redundancy was unfair as consultation as required by the Labour Relations Code didn't occur. Further, consultation goes beyond mere communication of the Company's decision to terminate by reason of redundancy and to give the Aggrieved Worker an option whether or not to waive notice.
40. Consultation is, firstly, an opportunity for both employer and employee to engage in meaningful discussions to explore alternative options to avoid redundancy. If redundancy is inevitable, consultation should provide an avenue to ascertain whether redeployment is possible which was not done.
41. The Tribunal must also consider Section 3(4) of the Labour Relations and Industrial Disputes Act, 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.”

This principle is reinforced in the paragraph 3 of the Labour Relations Code where it states:

“Save where the Constitution provides otherwise, the code applies to all employers and all workers and organisations representing workers in determining their conduct one with the other, and industrial relations should be carried out within the spirit and intent of the code. The code provides guidelines which complement the Labour Relations and Industrial Disputes Act; an infringement of the code does not of itself render anyone liable to legal proceedings; however, its provisions may be relevant in deciding any question before a tribunal or board.”

41. In essence, the Aggrieved Worker was not a part of the process nor was he given an opportunity to influence the decision taken but was merely informed what was going to occur concerning the elimination of his position. Thus, the Tribunal finds that Mr. Carnegie’s termination by reason of redundancy was unjustifiable.



A handwritten signature in black ink, appearing to be "A. P. ...", located in the bottom right corner of the page.

THE AWARD

In keeping with the provisions of Section 12 (5) of the Labour Relations and Industrial Act (LRIDA), the Tribunal awards that Mr. Carnegie be compensated in the amount of Five Million Four Hundred Thousand Dollars (\$5,400,000.00) for his unjustifiable termination by reason of redundancy.

DATED THIS 27th DAY OF JANUARY 2025



A handwritten signature in black ink, appearing to read "Sadeera Shaw", written over a horizontal dotted line.

Sadeera Shaw
Chairman

A handwritten signature in black ink, appearing to read "Rodcliffe Robertson", written over a horizontal dotted line.

Rodcliffe Robertson
Member, JP

A handwritten signature in black ink, appearing to read "Keith Fagan", written over a horizontal dotted line.

Keith Fagan
Member

Witness

A handwritten signature in black ink, appearing to read "J. Lindo", written over a horizontal dotted line.

Jody-Ann Lindo (Ms.)
Secretary to the Division