

INDUSTRIAL DISPUTES TRIBUNAL
Dispute No: IDT 48/2024

SETTLEMENT OF DISPUTE

BETWEEN

CARRERAS LIMITED

AND

MR. RENARDO ROWE

AWARD

I.D.T. DIVISION

MR. DONALD ROBERTS, C.D., J.P.-	CHAIRMAN
MR. ERROL BECKFORD	- MEMBER
DR. DENESE MORRISON, J.P.	- MEMBER

AUGUST 8 , 2025

DISPUTE NO. IDT 48/2024

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

CARRERAS LIMITED

(THE COMPANY)

AND

MR. RENARDO ROWE

(AGGRIEVED WORKER)



REFERENCE

By letter dated October 3, 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 Act") referred to the Industrial Disputes Tribunal ("the Tribunal") for settlement, the dispute between **Carreras Limited** and **Renardo Rowe** with the following Terms of Reference: -

"To determine and settle the dispute between Carreras Limited on the one hand, and Renardo Rowe 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)

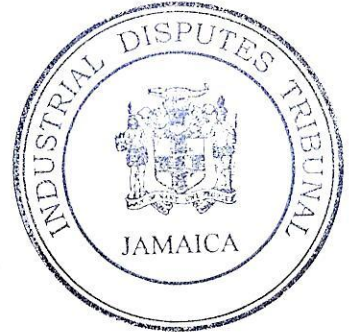
REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

Mr. Gavin Goffe	-	Attorney-at-law
Ms. Nicole Taylor	-	Attorney-at-law
Ms. Adalia Nembhard	-	Attorney-at-law

In attendanec:

Ms. Daidrey Miller	-	HR Business Partner
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The **Aggrieved** was represented by:

Mr. Alexander Nicholson	-	Industrial Relations Consultant
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In attendance:

Mr. Renardo Rowe	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS

The parties submitted Briefs to the Tribunal and made oral presentations over seven (7) sittings during the period December 9, 2024 to June 12, 2025. Over the course of the sittings the Tribunal reviewed fifteen (15) exhibits along with testimonies by way of oral evidence.

BACKGROUND TO THE DISPUTE

1. Carreras Limited ("the Company") is a marketer and distributor of cigarettes and tobacco related products in Jamaica, and part of the British American Tobacco Group. Its Corporate Office is located at 13A Ripon Road in Kingston, and its Sales and Distribution Office at 35 Hagley Park Road in Kingston. Mr. Renardo Rowe ("the aggrieved worker") was employed to the Company in February 2016 as a Sales and Distribution Representative.

2. Mr. Rowe's performance was deemed unsatisfactory and he was placed on a Performance Improvement Plan (PIP) for a period of six (6) months beginning in March 2020. At the expiration of the PIP, which included bi-weekly coaching sessions, the Company concluded that Mr. Rowe's performance had not improved in key areas and as a consequence terminated his employment with effect from September 2, 2020.
3. Mr. Rowe, through his representative, contested the termination citing a breach of the Labour Relations Code ("the Code"), the Labour Relations and Industrial Disputes Act, and the principles of natural justice. An appeal hearing was held, however, the decision to terminate was upheld. The dispute was subsequently referred to the Ministry of Labour and Social Security but remained unresolved after several efforts at conciliation. By way of a letter dated October 3, 2024, the Minister of Labour and Social Security, pursuant to his powers under Section 11 of the Labour Relations & Industrial Disputes Act (LRIDA), referred the matter to the Industrial Disputes Tribunal (IDT) for determination and settlement.

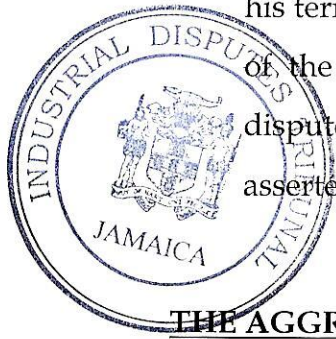


THE COMPANY'S CASE

4. Counsel for the Company argued that the issue concerned Mr. Rowe's inability to carry out the task assigned to him and that based on his poor performance in 2019 he was placed on a PIP for six (6) months and provided with coaching sessions during the period. He noted that Mr. Rowe had the opportunity to provide feedback during the sessions, and at the end of the PIP period suggested that he needed more time, signaling his acknowledgement that he was not meeting the required performance standards.
5. The Company's sole witness was Ms. Daidrey Miller, the HR Business Partner with nearly eighteen (18) years' experience as a HR practitioner. She had been employed to the Company since 2022 and therefore was not present at the time of Mr. Rowe's termination. She said that the PIP and the coaching sessions go hand-

in-hand, and that the objective is to ensure that employees with substandard performance would be given the tools, resources and support from the Line Manager to improve.

6. Under cross examination Ms. Miller was unable to say whether the comments in relation to the objectives identified in the 'Performance Improvement Plan Follow-up Discussion' [exhibit 4] was consistent with the contents of the letter of termination. She noted, however, that a PIP could be introduced based on the employee's poor performance over time or in a single year.
7. She contended that the letter of termination detailed issues relating to Mr. Rowe's poor performance but did not raise any matter specific to conduct. She acknowledged that in the said letter it provided Mr. Rowe with the right to appeal his termination. She said that by referencing Section 22 of the Code as the grounds of the appeal, it suggested that a disciplinary matter was at the heart of the dispute. She, however, agreed that the ruling of the appellant tribunal [exhibit 10] asserted that Section 22 was not relevant based on the type of dismissal.



THE AGGRIEVED WORKER'S CASE

8. Mr. Renardo Rowe was called to testify on his own behalf. He stated that he had been employed to Carreras Limited since 2016 and was promoted to Sales Representative in 2019. His task covered assigned routes and he told the Tribunal that he was moved from a 'bike sales representative' to a 'car sales representative' and given additional routes.
9. Mr. Rowe testified that he had problems with some of the routes assigned and this was reported to his supervisor. He admitted that the Company placed emphasis on productivity and effectiveness and agreed that product sales and regular visits to customers were priority areas. Mr. Rowe said that he had received two 'Employee Coaching Plans' for the Performance Improvement Plan Objectives for

the period March 1, 2020 to August 30, 2020, and acknowledged signing both documents on the March 6, 2020 and August 11, 2020 respectively, although he did not read them. He also acknowledged receiving the 'Performance Improvement Plan Follow-Up Discussion' document and affixing his signature but did not read that document.

10. Mr. Rowe said he only became aware that he was on a PIP three months into the programme when he met with Ms. Portia Dawson from HR and Ms. Shaneelle Ebanks, the Acting Area Sales Manager, and was told of his continued poor performance at which he said he requested more time to improve. He averred that concerns were raised in respect of him being unable to account for cash shortages, and indicated that he was facing challenges in carrying out his duties, over which he had no control. He believed it was unfair to assess him on those issues which the Company was aware of and had done nothing to address. He said he would have needed more time to prove his worth. Mr. Rowe indicated that he received a telephone call terminating his services and subsequently received his termination letter.
11. Under cross examination, Mr. Rowe said that he had more than six (6) meetings with his Line Manger during the period of the PIP but never considered them 'coaching sessions'. He was shown a Memorandum addressed to him dated May 30, 2020, on the subject of 'Sales Administration Training', but denied attending such a training.
12. Mr. Rowe testified that he was not given an opportunity to read the documents before signing as he was told to sign them immediately. He stated that it was Ms. Ebanks who informed him that he was on the PIP, however, he said that even after being told, he did not read the documents ~~not even~~ at the time of his appearance before the Tribunal.



13. Mr. Rowe said he received the letter of termination on October 6, 2020, although the letter was dated September 2, 2020. He said an appeal letter was addressed to Mr. Raoul Glynn, the Managing Director and handed to Mr. Dwayne Webb, Stock Controller. Mr. Rowe said Mr. Webb assured him that the letter was dispatched to the head office. A subsequent letter appealing the decision, he said, was sent by his representative, Mr. Alexander Nicholson and conceded that the grounds of appeal in both letters were different.

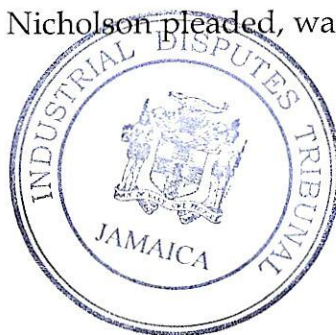
ISSUES

14. The following have been identified as the issues for consideration by the Tribunal:
- A. Whether the issue surrounding Mr. Rowe's termination related to capacity or conduct
 - B. In either circumstance, whether the steps necessary to ensure a fair procedure in accordance with equity, good conscience and the substantial merits of the case were observed.

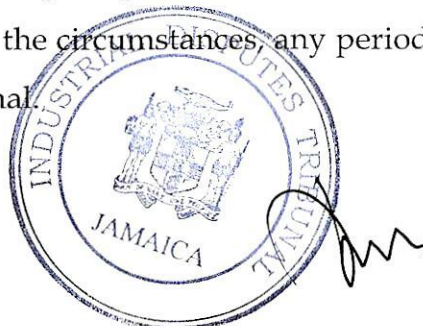
ANALYSIS

A. Whether the issue surrounding Mr. Rowe's termination related to capacity or conduct

15. In the law of unfair dismissal the first hurdle is for the employer to present to the Tribunal a legitimate reason for the decision to terminate the services of its employee. In this case the process of examining the reason for Mr. Rowe's dismissal has the potential to be a pivotal moment in assessing the fairness of the employer's action. The general test of fairness would revolve around whether the dismissal, as Mr. Goffe argued, was the result of Mr. Rowe's inability to perform the inherent requirements of the job, or, as Mr. Nicholson pleaded, was a matter wholly related to contractual misconduct.



16. The test remains applicable even where the procedures adopted in each case may be different, as the gravamen of the issue ruminates ultimately on whether the process leading to Mr. Rowe's termination was equitable and just, particularly where it affects his rights or interests. We are fully aware that conduct dismissals involve the adoption of disciplinary procedures set out in paragraph 22 of the Labour Relations Code, with strict adherence to due process and the principles of natural justice. However, when it comes to capacity or capability dismissal, a performance management procedure would be seen as more appropriate, not without, of course, an adherence to a process that this Tribunal can adjudge to be fair and reasonable under all the circumstances. In either case a threshold of substantiality should run throughout the reason for the dismissal.
17. In that regard, we have to rely on best practices in the field of employment law and human resource management. To begin, every contract of employment, even if not so specifically stated, imply a requirement on the part of the employee to perform his/her task to a minimum standard. The Code lays out such a responsibility for the 'individual worker' under Part II Section 6 where it states that he *"has a responsibility, to his employer to perform his contract of service to the best of his ability..."*.
18. When it comes to performance related issues, it is important for employees to have an opportunity to improve, and employers are therefore generally expected to work constructively - invariably through a performance improvement plan - to identify performance gaps, agree on objectives as well as timescales for improvement. It is also necessary for employers to provide guidance and support to assist the employee in the performance of his duty, as these are seen as important considerations in applying the 'test of fairness'. While there is no set timescale for this, and it will depend on the nature of the poor performance, the needs of the business, and what would be reasonable in the circumstances, any period between 3 to 12 months is generally considered normal.



19. Dismissals for poor performance should not, therefore, come as a surprise to the employee. The courts have weighed in on this issue in the case Burns v. Turboflex Ltd [1977] UKEAT, where the Appeal Tribunal held that the *“respondent (employer) never told the appellant (employee) that his performance was below expectation, that he was required to make improvements, or the fact that a failure to make improvements might lead to his dismissal.”* In addition, the Tribunal reasoned that the employee ought to have been *“given the opportunity of hearing what the employers felt about his performance and giving his side of the case.”*
20. The onus to prove that the dismissal was fair rest with the employer, and the Tribunal, operating in its original jurisdiction, is not bound to accept the form in which the case may have been presented. We are obliged to carry out our own inquiry, and as the Courts have pronounced, *“...entitled to take a fully objective view of the entire circumstances of the case before it...”*¹. In pursuance of that, we sought guidance on what would be the relevant considerations to focus on in making the distinction between misconduct and poor work performance, relying on the ruling in the matter ZA One (Pty) Ltd t/a Naartjie Clothing v Goldman No and Others (2013) 34 ILJ 2347 (LC), where the court made the following declaration:

“... what is then the difference then between negligence (misconduct) and poor work performance? The distinction can be found in the concept of wilfulness or deliberateness. In the case of negligence, it must be present, whilst in the case of poor performance, it must be absent. ...’

...‘In my view, the distinction between poor performance and misconduct (negligence) can be established by the asking of two simple questions when it has been established that an employee indeed failed. The first question is ‘Did the employee try but could not?’ and the second question is ‘Could the employee do it, but did not?’ If the first question is answered in the affirmative, then it has to be poor performance, because an employee that honestly (for the want of a better word) seeks to achieve what is expected of



¹ *The Industrial Disputes Tribunal and the University and Allied Workers Union v. University of Technology, Jamaica [2012] JMCA Civ 46*

him or her but is unable to do so is incapacitated and would not behave wilfully or indifferently or fail to apply the necessary care. If the second question is answered in the affirmative, then it has to be misconduct, as this would be a situation where the employee is fully able to do what is required not to fail, and such failure could therefore only be because of indifference or wilfulness or a failure to take care. ...'

21. This leads us, in the first instance, to turn to the evidence presented in this case to determine and settle whether Mr. Rowe's dismissal was one relating to conduct or whether it had to do with his capability.
22. Mr. Rowe testified that he was employed to Carreras Limited for four (4) years and seven (7) months up to the time of his termination on September 2, 2020. Within the last year prior to his termination he was promoted to the position of Sales Representative; it is in this period that the management claimed the issue of poor performance arose, and Mr. Rowe was placed on a PIP aligned with a coaching plan. According to Ms. Miller, the Company's sole witness, a coaching plan is introduced for employees whose performance have been deemed substandard. She said "...the tools, resources and support from the Line Manager to improve his or her performance" would be provided. Ms. Miller said she is not aware of the circumstances which led to the introduction of the PIP in Mr. Rowe's case as it could have been triggered by his performance over time or in a single year.
23. In order to better understand the circumstances which led to Mr. Rowe's termination, we have to rely on the September 2, 2020 letter of termination from the Managing Director, which has been reproduced below in full:



"September 2, 2020

*Mr. Renardo Rowe
c/o Carreras Limited
13a Ripon Road
Kingston 5.*



Dear Mr. Rowe

As you aware your 2019 performance was significantly below the standard required of a Sales and Distribution Representative. In an effort to improve your work performance you were placed on a six (6) month Performance Improvement Plan (PIP) effective March 1, 2020. This plan was tailored to improve your specific developmental areas through consistent feedback, coaching and retraining in key areas.

Your Key Objectives were:

- 1) Shortage Management*
- 2) Receivable Management*
- 3) Back-office paperwork and end of day activities*
- 4) Monthly Effectiveness Targets*
- 5) Improvement in Interpersonal relationship (teamwork)*

We have noticed a significant improvement in your teamwork and interpersonal relationships over the last six months. Unfortunately, however, you have not improved in the other key areas as required.

Feedback from your bi-weekly coaching session on April 7, 2020 shows that you did not achieve two KPIs: Shortage Management and Back Office/Paperwork. The inefficiencies identified in your paperwork were: Mr. Cash Sales, Take of Inventory Report and Reason for No sale report. These are all core responsibilities of the Sales and Distribution Representative and are required steps to guarantee a good customer service experience.

On May 5, 2020 you received a letter from the Company for mishandling of Company's Products and Cash. The letter outlined product shortage and debit memo totalling \$12,340.00, posted on Friday April 17th, 2020. Due to your inability to clear the shortage, you were grounded without pay on Monday April 20th, 2020.

These types of errors occurred despite individual assistance/training from your Line Manager on the procedure required for end of day transactions.

You continued to show very little improvement after this and as such the Company completed an individual Sales Administration re-training session on May 20th 2020 to ensure that you understand the Company Policies and Procedures. Despite this your subsequent follow up and coaching sessions on June 19th and 29th, 2020 showed that you were still not achieving your KPIs. You were advised during all these sessions that you were failing the PIP and falling below the performance standard required of a Sales & Distribution Representative. You reviewed all documents with your Line Manager and signed agreeing to such.

On your final coaching session with your Line Manager and the HR Manager on August 13th 2020 you admitted that despite six months of consistent coaching and retraining your performance was only at 50% of the required performance of a Sales and Distribution Representative. You requested an extension of your PIP but noted that you were not sure how much more you could improve or how many more months it would take you to do so.

The Company is concerned with your consistently low performance. Your inefficiencies and mistakes are costly and negatively affect our customer service. We hoped that the last six months would have helped you improve but unfortunately you have continued to perform at an unacceptable level. As such your services will be terminated effective September 2, 2020.

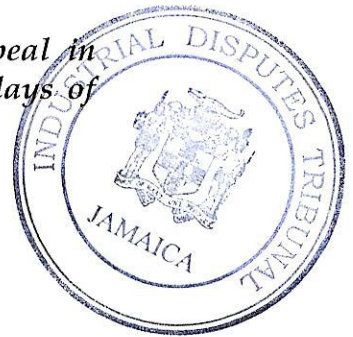
You will receive all outstanding wages and any unused vacation pay owed to you pending the completion of back-office checks to your route and any other liabilities owed to the Company. Please note that all outstanding liabilities to the Company will be deducted in full from your final payment.

You are requested to return all items in your possession belonging to Carreras Limited i.e. ID, medical card, cellphone, uniforms, etc. to your Line Manager no later than September 3, 2020.



If you are dissatisfied with this decision, you may appeal in writing to Rogello Paredes - Finance Manager within 5 days of receipt of this letter, setting out the grounds of appeal.

*Yours sincerely
Raoul Glynn
Managing Director"*



24. The letter from Mr. Glynn was quite detailed and in the Tribunal's view, was consistent throughout in identifying the concerns of the Company as it relates to Mr. Rowe's capability rather than his conduct. The matter of the cash shortages, which invariably infers dishonesty on the part of the employee was highlighted as a key objective, however, reference was to Mr. Rowe's *"inability to clear the shortage"*, and the *"types of errors occurred despite individual assistance/training"*, without a hint of suggesting misconduct on his part. In fact, Mr. Rowe, on May 8, 2020, received a Memorandum from Mrs. Tashane Grizzle-Davidson, the Area Sales Manager on the subject: Cash & Product Shortages while on a Performance Improvement Plan, where she highlighted that he (Mr. Rowe) acknowledged that: (i) the shortage was correct; and (ii) the error is one that should have been realized if the necessary due diligence were observed. Mr. Rowe signed acknowledging receipt of the memo and confirmed that he had discussion with his Manager on the matter. [see exhibit 14].
25. Mr. Rowe exercised his right to appeal the termination in an undated handwritten letter addressed to Mr. Glynn instead of Mr. Parades as suggested in the termination letter. Similarly, his representative, Mr. Nicholson, erroneously addressed the appeal to Mr. Glynn in a letter dated March 15, 2021. This, of course, will not detain us as the Company overlooked the errors and held an appeal hearing. What is far more important for us, however, was to examine whether the grounds of appeal in both letters were able to direct the Tribunal's mind to the nature of a dispute beyond the perfunctory reference that Mr. Rowe's conduct was the issue. Mr. Nicholson raised issues of procedures relating to

discipline without the obvious proof to counteract the Company's assertion about poor performance, while Mr. Rowe, without more, vaguely hinted at the unreasonableness of the objectives set out in the PIP.

26. Even then, in carrying out a fully objective view of the circumstances of the case, we have concluded from the evidence that the Company's contentions that Mr. Rowe does not possess the skills, knowledge or ability to perform the task required of a Sales & Distribution Representative, have been met. We took note of the fact that:

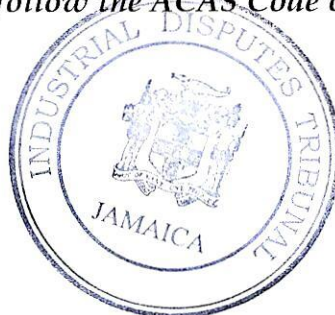
- (i) Mr. Rowe's poor performance was identified in 2019, consequent on his promotion, and not raised as an issue in the previous years of his employment;
- (ii) There was no evidence indicating that Mr. Rowe has had issues relating to misconduct;
- (iii) The letter of termination sets out in detail the circumstances leading to Mr. Rowe's termination all relating to his lack of performance under the PIP;
- (iv) The appeal letters from Mr. Rowe and his representative, Mr. Nicholson did nothing to disturb the Company's claim that the sole issue for the termination was poor performance.

27. In the Tribunal's mind, the Company was able to satisfy the substance of the reason for the dismissal relating to poor performance, that is, that Mr. Rowe '**tried but could not**' meet the expectations set out in the PIP, rather than a case of misconduct having to do with the fact that '**he could do the task but did not.**' [ZA One (Pty) Ltd t/a Naartjie Clothing v Goldman No and Others (2013) 34 ILJ 2347 (LC)], supra.



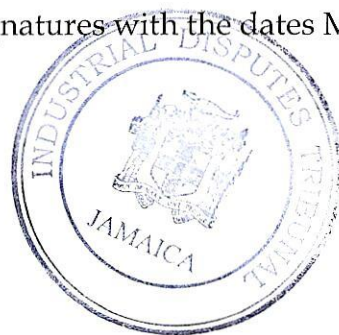
B. In either circumstance, whether the steps necessary to ensure a fair procedure in accordance with equity, good conscience and the substantial merits of the case were observed

28. As we conclude in the case at bar, Mr. Rowe's dismissal was one of capability where performance management procedures rather than disciplinary procedures are seen as the appropriate approach to adopt. Best practices in the field of employment law and human resource management have pointed to the need to ensure that the performance improvement processes include setting clear expectations, provide support and create improvement plans. There is also the need for regular monitoring to track the progress and provide constructive feedback on the employee's performance. If there is no improvement in performance formal warnings can be issued, outlining areas of concern and potential consequences.
29. The Supreme Court ruling, we believe, in the matter Housing Agency of Jamaica and Industrial Disputes Tribunal and Leslie Daley [2019] JMSC Civ. 146, bears relevance. The learned judge in the case argued that *"the Tribunal fell into error"* when it concluded that the disciplinary procedure should have been followed in the termination of Mr. Daley. Mr. Daley's was terminated under a clause in his employment contract which entitled the Housing Agency of Jamaica (HAJ) to terminate public officers under fixed-term contracts 'without cause' in accordance with the Government's Fixed-Term Contract Directives. In her judgement Wiltshire, J stated that an *"examination of the Code quickly bears out the irrelevance of this section [section 22] as there was no misconduct..."* She quoted from Holmes v Qintetiq Ltd. UK EAT/ 0206/ 15/ where it was said in that case there was no evidence suggesting that the dismissed worker [the claimant] *".... breached the Respondent's [the employer] rules of conduct or discipline so as to merit disciplinary action or to give rise to a disciplinary situation. That meant the Respondent was not required to follow the ACAS Code of Practice on disciplinary*



procedures ...” Indeed, this is what we have concluded, that there was no evidence suggesting that Mr. Rowe breached rules of conduct.

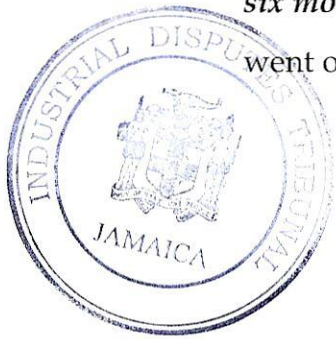
30. This takes us to the second hurdle, that is, to examine the evidence to determine whether the process leading to Mr. Rowe’s dismissal for poor performance was fair in all the circumstances.
31. The authors of Commonwealth Caribbean Employment and Labour Law pointed to the fact that at a basic intrinsic level of common law fairness the Tribunal’s remit would be to ensure that the dismissal conforms to ‘procedural fairness’ through the concepts of natural justice and due process. It falls in with the very purpose and intent of the Labour Relations Code (not paragraph 22 in this instance) to have proper human resource management techniques in place that *“protect workers and employers against unfair labour practices.”* The Code, in Part V, paragraph 19, further mentions the importance of two-way flow of communication and the genuine exchange of views and information through a consultative process.
32. Mr. Rowe was placed on a PIP which identified five (5) areas for improvements for the period March 1, 2020 to August 30, 2020. The Plan Co-ordinator was Mr. Rowe’s supervisor, Mrs. Tashane Grizzle-Davidson along with Ms. Shaneele Ebanks. Two ‘employee coaching plans’ were tendered into evidence identifying the specific issues to be assessed, namely: (i) employee’s activities; (ii) success measurement; (iii) manager’s activities; (iv) milestone & benchmarks; and (v) target dates. The column, ‘success measurement’, indicated the below par performance of Mr. Rowe in the areas of - ‘shortage management’, ‘receivables management’, back office paper work and day end activities, ‘achieve monthly effectiveness targets KPI’, and ‘teamwork, interpersonal relationship’. Each of the page was initialed by Mr. Rowe and the back pages bore his signatures with the dates March 6 and August 11, 2020.



33. There was evidence of bi-weekly meetings and training offered to Mr. Rowe during the PIP period. We are satisfied that these meetings provided an opportunity for feedback and continued coaching. Following the May 8, 2020, Memorandum from Mrs. Grizzle-Davidson to Mr. Rowe regarding 'Cash & Product Shortages while on a Performance Improvement Plan', evidence showed that Mr. Rowe completed a 'Sales Administration Training' course as stated in the May 30, 2020, Memorandum sent to him, to which he confirmed.

34. At the end of the PIP review period Mr. Rowe was advised, in his letter of termination dated September 2, 2020, that although there was "*significant improvement in his [your] teamwork and interpersonal relationships over the last six months...*", he had "*...not improved in the other key areas required.*" The letter went on to state the following:

"The Company is concerned with your consistently low performance. Your inefficiencies and mistakes are costly and negatively affect our customer service. We hope that the last six months would have helped you improve but unfortunately you have continued to perform at an unacceptable level. As such your services will be terminated effective September 2, 2020."

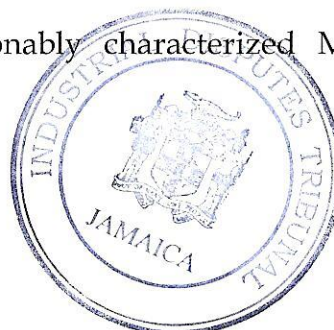


35. As we have pointed out earlier, the principles governing the establishment of a case of unfair dismissal necessitated the adherence to a number of procedural steps. The conclusive step relating to the reasonableness of the employer's action would be the manner of dismissal.

36. In examining the evidence and applying the rules of a fair procedure in accordance with equity, good conscience and the substantial merits of the case, we asked ourselves the following questions:

- a) Was Mr. Rowe made aware of his poor performance?
- b) Whether a PIP was put in place with his knowledge and input as to the standards of performance expected of him?

- c) Whether the Company provided periodic feedback and Mr. Rowe was given the opportunity to state his side of the story?
 - d) Whether Mr. Rowe was provided with the 'tools, resources and support' from his Line Manager to improve his performance?
 - e) Whether the manner of his dismissal accords with the offence?
37. When all the circumstances surrounding the case are examined, it is clear, even from Mr. Rowe's own evidence, that he was aware of his poor performance; that he did not appear to have issues with the benchmark criteria set for performance improvement as his signature was placed on both the 'employee coaching plan; that regular meetings were held and no substantive evidence led us to believe Mr. Rowe was not given an opportunity for feedback; and that training and coaching took place during the period of the PIP.
38. However, we took note of the fact that Mr. Rowe was summarily dismissed, an action normally reserved for 'gross misconduct' associated with behaviour relating to theft or fraud, violence or threats, serious breach of safety, insubordination or breach of confidentiality. Poor performance is generally not a summary dismissible offence, and more particularly in the circumstances surrounding peculiarity of this case, ought not to be equated with 'gross misconduct.'
39. We are of the view that the summary dismissal of Mr. Rowe for poor performance was insufficiently serious to warrant summary dismissal, and on that ground alone the question of the fairness of the dismissal gives cause for concern. The author, in his book on the Law of Unfair Dismissal, argued that *"... the tribunal must not make the mistake of assessing the reasonableness of the choice of sanction of dismissal by whether it considers that a lesser penalty would have been appropriate."* We have not done so in this case, and in fact, since we have found that the employer had not reasonably characterized Mr. Rowe's actions as



amounting to 'gross misconduct', then, in that regard, his summary dismissal must be seen as unfair and unjust.

40. We believe he was entitled to notice pay or pay in lieu of notice based on the reason for his dismissal. The courts have all but weighed in on this where it sets out the circumstances that neither notice pay nor pay in lieu of notice is an entitlement. In the Court of Appeal matter involving David Cousins and Abraham Ferguson [2023] JMCA. Civ 7, Fraser, JA stated that:

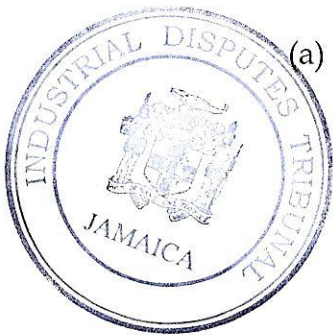
"The E(TRP)A has, however, not abrogated the common law concerning the effect of abandonment of employment or where summary dismissal is justified. Neither notice nor payment in lieu of notice is required if the employee either abandons the job or the contract is justifiably terminated for cause by summary dismissal..."

41. We respectfully do not believe, when examining the entire circumstances of the case, that Mr. Rowe's poor performance could rise to the level to warrant that his contract be *"justifiably terminated for cause by summary dismissal."*
42. The matter of the effective date of Mr. Rowe's termination remains an unsettled issue. We have accepted Mr. Rowe's testimony (as this was not refuted by the Company) that he received a telephone call on September 2, 2020, regarding his termination. The evidence was inconclusive for us to determine whether the call was to give notice of an intention to terminate, or to terminate with immediate effect. What we do know is that some weeks after, Mr. Rowe received and signed for on October 6, 2020, his termination letter dated September 2, 2020, with the effective date of termination being the same date. Employment Law experts have noted that:



*"In a dispute concerning alleged unjustifiable dismissal, the IDT is required to enquire into the reason for the employee's dismissal and ensure that the employer had a fair reason for terminating the contract, and that the termination was done in a manner that respected the employee's rights to dignity and job security."*²

43. In enquiring into the reason for Mr. Rowe's dismissal, and determining whether it was a fair reason, we had to rely solely on the letter of termination. We were able to conclude from the letter that the Company clearly intended to dismiss Mr. Rowe; that the language was direct and the reason unambiguous; and that Mr. Rowe was given five (5) days to appeal the decision in accordance with due process. Mr. Rowe received the letter on October 6, 2020, as borne out by his signature.
44. The Company provided no evidence on which we could determine what transpired between the telephone call on September 2, 2020 and the written communication of October 6, 2020. A termination should not be made retroactive, and would not in the circumstances be seen as fair. It should only take effect on the date it is communicated to the worker, in this case October 6, 2020, indicating the relevant date of Mr. Rowe's termination.
45. Mr. Rowe was not dismissed "*for cause by summary dismissal*", he was dismissed for poor performance; and the effective date of his dismissal was made retrospective having regard to the fact that he was provided with the termination letter nearly five (5) weeks after it was said to be effective. For these reasons we have concluded that:

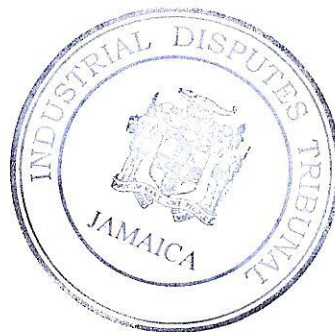


- (a) The summary dismissal for poor performance was harsh against the background that the distinction between poor performance and misconduct had to be established, and the Company justifiably argued that this was a case of poor performance but applied the ultimate sanction reserved for gross misconduct; and

² <https://www.jamaicaobserver.com/2023/05/30/an-employers-right-to-remain-silent-on-the-reason-for-dismissal/>

(b) The effective date of termination has to be October 6, 2020, the date Mr. Rowe received the letter, and only from which the Tribunal can reasonably assess whether the dismissal conformed with the provisions of the Code which provides for a right of appeal.

46. While the Company, for the most part have seemingly applied the rules of fair procedures, when, however, we take a fully objective view of all the circumstances of the case, they have not, in our view, acquitted the onus of showing that the dismissal was fair.
47. Since the matter of the appeal has come up, we believe we should give some thought to it. The Company, in our view, could have taken the hardline position that the appeal was not properly made out as it was never addressed (either by Mr. Rowe or Mr. Nicholson) to Mr. Rogello Paredes, the Finance Manager. As Mr. Rowe's appeal letter was undated, we are unsure as to when it was written. That, however, is inconsequential as the appeal was heard but was not based on the characterization of the dismissal as one of poor performance. The appeal was rightly dismissed as the grounds pleaded were not provable.
48. Mr. Rowe had mitigated his loss, having obtained employment in 2022, two years after his termination. He was also entitled to reasonable notice or pay in lieu of notice given his 4 ½ years of service, his unblemished record of performance and the reason for his dismissal, and the retroactive date of his termination would have deprived him of additional earnings.

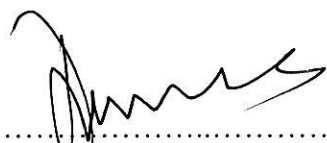



AWARD


49. Having regard to the foregoing, and in accordance with section 12(5)(c) of the Act, the Tribunal finds that the dismissal of Mr. Renardo Rowe was unjustifiable and order the Company to compensate him in the amount of Three Hundred Thousand Dollars (\$300,000.00) for his unjustifiable termination.

Dated this 8th day of August, 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