

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 25/2014

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SETTLEMENT OF DISPUTE

BETWEEN

DR. E. V. PATRICK HARRIS

AND

MISS ANNETTE CARVALHO

AND THE

*AWARD*

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP - CHAIRMAN

MR. TREVOR GRAHAM, JP - MEMBER

MR. DWIGHT NELSON, CD, JP - MEMBER

JANUARY 13th, 2016

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**DR E. V. PATRICK HARRIS  
(THE EMPLOYER)**

**AND**

**MISS ANNETTE CARVALHO  
(THE AGGRIEVED)**

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**REFERENCE:**

By letter dated July 13, 2014, the Honourable Minister of Labour and Social Security in accordance with Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

*“To determine and settle the dispute between Ms. Annette Carvalho on the one hand and Dr. E. V. Patrick Harris on the other hand over the termination of her 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:

|                           |   |                                |
|---------------------------|---|--------------------------------|
| Mr. Charles Jones, CD, JP | - | Chairman                       |
| Mr. Trevor Graham, JP     | - | Member, Section 8(2) (c) (ii)  |
| Mr. Edward Dixon, CD, JP  | - | Member, Section 8(2) (c) (iii) |

- *Mr. Dixon regrettable died on February 8, 2015 and in accordance with the provisions of Section 8(4) of the Labour Relations and Industrial Disputes Act, Mr. Dwight Nelson, CD, JP was appointed to replace him.*

### **REPRESENTATIVES OF THE PARTIES:**

The **Employer** was represented by:

|                          |   |                 |
|--------------------------|---|-----------------|
| Mr. Lorenzo J. Eccleston | - | Attorney-at-Law |
|--------------------------|---|-----------------|

|   |   |          |
|---|---|----------|
| In attendance was <b>Dr. E. V. Patrick Harris</b> | - | Employer |
|---|---|----------|

The **Aggrieved** was represented by:

|                   |   |                                 |
|-------------------|---|---------------------------------|
| Mr. Howard Duncan | - | Industrial Relations Consultant |
|-------------------|---|---------------------------------|

|  |   |                  |
|--|---|------------------|
| In attendance was <b>Miss Annette Carvalho</b> | - | Aggrieved worker |
|--|---|------------------|

### **SUBMISSIONS AND SITTINGS:**

Briefs were submitted by both parties who made oral submissions during six (6) sittings held between November 3, 2014 and December 18, 2015.

### **BACKGROUND TO THE DISPUTE:**

Miss Annette Carvalho was employed as a Nurse/Receptionist to Dr. E. V. Patrick Harris in June 1987. Miss Carvalho received a letter dated January 3, 2013 terminating her employment due to insubordination and unpunctuality. She reported the matter to the Ministry of Labour and Social

Security and two conciliatory meetings were held, but the parties failed to arrive at a settlement. Consequently the Honourable Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal for settlement in accordance with the provisions of Section 11(A)(1)(a)(i) of the Labour Relations and Industrial Disputes Act.

**EMPLOYER'S CASE:**

Mr. Lorenzo J. Eccleston, Attorney-at-Law representing Dr. Harris stated that Miss Carvalho was employed as a Practical Nurse/Receptionist from Mondays to Saturdays during the hours 8:00 a.m. to 2:30 p.m., and among her duties were: communicating with patients, collecting fees and preparing payment vouchers.

In 2001 Dr. Harris entered the political arena, he was elected and served as a Member of Parliament from 2002 to 2011. During this period he relied heavily on Miss Carvalho in the running of the office.

On or about January 2012, Miss Carvalho unilaterally made a decision that she would no longer be working on Tuesdays, thereby changing the terms of her contract.

Mr. Eccleston called Dr. Harris as a witness.

Dr. Harris in his testimony stated that for over twenty five (25) years the relationship with the Aggrieved was very good and her working conditions were never an issue. During the years as a Member of Parliament he was in his medical practice on Friday and Saturday mornings, and during this time the relationship with Miss Carvalho continued to be good.

In 2011 Dr. Harris returned to his full time medical practice but his patient level at that time was low so he became engaged in rebuilding his practice. He reiterated that Miss Carvalho's hours of duty were Mondays to Saturdays from 8:00 a.m. to 2:30 p.m.

He stated that in January 2012 Miss Carvalho advised him that she would not be working on Tuesdays anymore. He did not agree to this as he thought it was an unreasonable request. She

then unilaterally decided that she would not work on Tuesdays and consequently the working relationship deteriorated. In addition she started arriving to work late.

In December 2012 she was granted one month's vacation leave and on her return to work in January 2013, there was no change in her demeanour. He therefore decided to terminate her services.

### **AGGRIEVED WORKER'S CASE:**

Mr. Howard Duncan, Industrial Relations Consultant contended on behalf of his client as follows:

- “1) That the services of Miss Annette Carvalho were terminated without her being charged for any offence.
- 2) That she was not afforded the right of representation.
- 3) That Miss Carvalho had a right to return to work after her well-deserved vacation leave as mandated by law.
- 4) That her termination is a breach of the Labour Relations Code and the rule of Natural Justice.
- 5) That Miss Carvalho is to be paid for all outstanding vacation leave.
- 6) That the Tribunal finds that Miss Annette Carvalho was terminated unfairly and unjustifiable and that she be reinstated in her job without any loss of pay.”

He further represented that Miss Carvalho worked over forty (40) hours per week and that she was not compensated for the additional hours worked. He said that since 2012, based on an agreement she did not work on Tuesdays and that this caused her working relationship with Dr. Harris to deteriorate. In December 2012 she applied to take vacation leave and was told that if on her resumption she did not rethink her day-off, he Dr. Harris “would be sorry for her”.

Mr. Duncan called Miss Carvalho as a witness.

Miss Carvalho testified that she was employed as Nurse/Receptionist but also did secretarial work and procurement in addition to organising functions at Dr. Harris' home. She said that during the time Dr. Harris was a Member of Parliament she was granted no vacation leave nor was she paid salary in lieu of leave. She further stated that she never refused to obey any instructions and that her services were unfairly terminated. During Cross Examination she insisted that the day-off on a Tuesday was agreed to by Dr. Harris but that subsequently, he would come to her work station from time to time to tell her to rethink that position.

Miss Carvalho also testified that she had a very good working relationship with Dr. Harris over the years and that it was only after she insisted on getting a day-off that the relationship changed.

#### **TRIBUNAL'S DELIBERATIONS AND FINDINGS:**

Members in their deliberations gave careful consideration to the evidence presented and concluded that this was a case of a good working relationship "gone bad" after twenty-four (24) years, with the main contributing factor being the matter of a day-off which Miss Carvalho maintained was agreed to by Dr. Harris. Indeed, in cross examination Dr. Harris stated that her services up to 2001 were excellent.

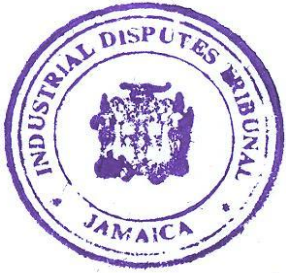
The Tribunal following its deliberations found that the procedure adopted by Dr. Harris, the Employer, in the dismissal of Miss Carvalho was at variance with the Labour Relations Code and that her dismissal without formally informing her of any charge/(s); and therefore not allowing her the opportunity to answer the said charge/(s) was in violation of her rights as a worker.

The Tribunal therefore finds that failure on the Employer's part to exercise due process rendered Miss Carvalho's dismissal unjustifiable.

**AWARD:**

In all the circumstances of this case, and taking into consideration the welfare of all concerned the Tribunal has decided not to order reinstatement as requested. The Tribunal Award is for Miss Carvalho to be compensated in the amount of Four Hundred and Fifty Thousand Dollars (\$450,000.00) in full and final settlement for her unjustified dismissal.

**DATED THIS 13<sup>th</sup>, DAY OF JANUARY, 2016**



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Charles Jones, CD, JP  
Chairman

.....  
Trevor Graham, JP  
Member

.....  
Dwight Nelson, CD, JP  
Member

Witness: .....

Keisha Mighty-Brown (Mrs.)  
Acting Secretary to the Division