

**INDUSTRIAL DISPUTES TRIBUNAL**

**Dispute No: IDT 12/2024**

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**SETTLEMENT OF DISPUTE**

**BETWEEN**

**FIREARM LICENSING AUTHORITY**

**AND**

**MISS MABEL FOSTER**

***AWARD***

**I.D.T. DIVISION**

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

**MAY 12, 2025**

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**DISPUTE NO. IDT 12/2024**

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**FIREARM LICENSING AUTHORITY  
(THE AUTHORITY)**

**AND**

**MISS MABEL FOSTER  
(AGGRIEVED WORKER)**

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**REFERENCE**

By letter dated July 11, 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 **Firearm Licensing Authority and Mabel Foster** with the following Terms of Reference: -

**“To determine and settle the dispute between Firearm Licensing Authority on the one hand, and Mabel Foster on the other hand over the termination of her Contract of 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

Representatives of the **Company**:

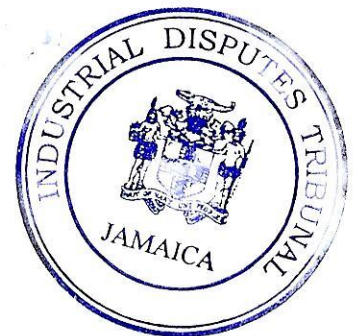
Mr. Nicholas Ranger	- Attorney-at-law and Legal Officer
Mr. Haleem Anderson	- Director of Finance and Administration

Representative of the **aggrieved worker**:

Mr. Dirk Harrison	- Attorney-at-Law
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**In attendance**

Miss Mabel Foster	- Aggrieved Worker (Online)
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## SUBMISSIONS AND SITTINGS

The parties submitted Briefs to the Tribunal and made oral presentations over nine (9) sittings covering the period August 27, 2024 through to April 15, 2025. Over the course of the sittings the Tribunal examined eight (8) exhibits along with testimonies by way of oral evidence.

## BACKGROUND TO THE DISPUTE

1. The Firearm Licensing Authority (the “**FLA**”) is a body corporate established under Law to regulate the handling of firearms and ammunition, and the importation and exportation of firearms and ammunition into or from Jamaica. Miss Mabel Foster (the “**aggrieved worker**”) was employed by the FLA as an Investigator under a Fixed-Term Contract for a period of three (3) years commencing from November 1, 2013 to October 31, 2016.

2. The Contract contained a termination clause which allowed either party to terminate the agreement by giving three (3) months' notice in writing, or in the case of the termination being initiated by the FLA, the alternative of three (3) months' salary in lieu of notice.
3. Miss Foster's contract was terminated on September 8, 2016. She was advised in her termination letter that she would receive paid salary up to the end of her contract period, along with payment for unused vacation leave and accumulated gratuity up to the date of her termination.
4. Miss Foster through her legal representative, challenged the dismissal as unfair, prompting the intervention of the Ministry of Labour's Conciliatory Department in an attempt to resolve the dispute. The efforts of the Ministry were not successful and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

### **THE FLA'S CASE**

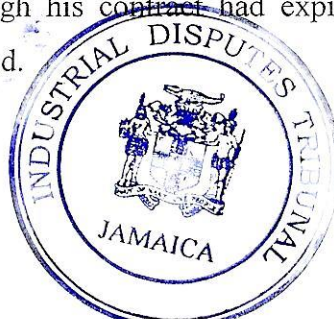
5. Counsel for the FLA said that Miss Foster's contract was terminated in accordance with the terms of the Agreement, and that the employer cannot be expected to concede to the demands which exceed those guidelines. The FLA's only witness was Mr. Haleem Anderson, the Director of Finance and Administration. Mr. Anderson said his responsibilities include human resources, incorporating recruitment, training, termination and matters relating to discipline. During the period leading up to the termination of Miss Foster's contract, Mr. Anderson held the position of Financial Accountant.
6. Mr. Anderson said that Miss Foster was interviewed by a panel and recommendation made to the Chief Executive Officer (CEO) for her appointment; thereafter the Human Resource (HR) Department, upon the approval of the CEO, made an offer to her for a three-year contract.
7. He testified that in order to maintain consistency in relation to Human Resource matters, FLA would rely on the systems and procedures established by the Government, through the Ministry of Finance and the Public Service, and in particular the Policy Guidelines from the Ministry with respect to Fixed-Term Contract Officers. He pointed to Section 8 of the Policy





under “termination”, which shows that the express provision of “termination without cause” was followed by FLA in the case of Miss Foster.

8. Mr. Anderson averred that Miss Foster’s Contract Agreement sets out under the clause: “Conditions of Service” that her engagement would be completed on the last day of service unless the parties, by mutual consent, agreed to extend for a further period. He stated that the continuation of the contract beyond the expiration date requires a process of evaluation commencing at the end of the contract. That process, he explained, would begin with a self-assessment followed by an evaluation session with the employee’s supervisor. Where the employee and his/her supervisor are in agreement, the evaluation report would be forwarded to the HR Department for vetting, and then passed to the CEO for him to determine whether or not to re-engage the employee. He said the CEO may not approve a further extension of the contract *“and is not expected to offer an explanation.”*
9. Mr. Anderson noted that in Miss Foster’s case her contract was terminated prior to the end of the contract date, and that since it was a “termination without cause” no reason was given. He pointed to the clause in her contract which gives either party the right to terminate the contract by giving three (3) months’ notice in writing, or for the FLA to exercise the option of providing three (3) months’ salary in lieu of notice. He admitted that Miss Foster was not paid the three(3) months’ in lieu of notice, and that the FLA acknowledged that such payment should have been made, as well as pro-rated gratuity and vacation leave pay up to the end of her contract. Mr. Anderson said that to the best of his recollection the first time Miss Foster was offered the three (3) months’ payment in lieu of notice was in 2022.
10. Under cross-examination, Mr. Anderson stated that there is no procedure that allows employees to indicate whether or not they wished to renew their contract, and he disagreed with the assertion that Miss Foster had given notice to Miss Camille Lennox, the then HR Manager, of her intention to have her contract renewed. He said the process of renewal on average takes about one month and the employee would be provided with a month-by-month contract in writing until the process is completed. He cited his own experience in the past where he turned up for work although his contract had expired and received monthly contracts until his contract was renewed.



11. Mr. Anderson stated that he is fully aware of the existence of procedures elsewhere for employees to indicate whether or not they would wish to have their contracts renewed, however, that was not considered appropriate for Investigators at FLA given the nature of their work.
12. Mr. Anderson informed the Tribunal that at the time of Miss Foster's dismissal he was the Finance Manager and was not aware of the circumstances leading to her termination, neither was he aware that she received the letter of termination on the day of her return from vacation leave.
13. Further in his testimony, he stated that the Performance Appraisals for Miss Foster for the periods October 1, 2014 to June 30, 2015 and July 1, 2015 to December 31, 2015, showed that she attained more than the 75 percent score which would entitle her to gratuity payment.

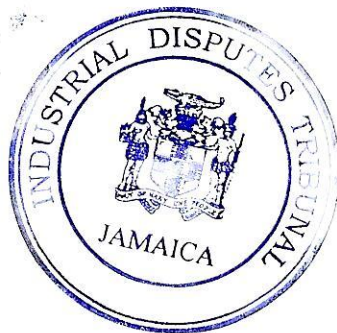
#### **THE AGGRIEVED WORKER'S CASE**

14. Counsel for the aggrieved worker spoke of the "bizarre circumstances" leading to her dismissal, a mere thirty seven (37) days before the expiration of her contract. He said her performance was good based on her appraisal scores, she had the support of her supervisor and had a legitimate expectation that her contract would have been renewed.
15. Miss Foster, who currently resides in the United States, gave testimony on her own behalf. She said that she worked at the FLA as an Investigator from 2013, and after working a few weeks in the Kingston Offices was permitted to work from home in St. Ann. She told the Tribunal that she had to demonstrate to the FLA that files could be confidentially stored at her home, and this was confirmed after a visit by a Senior Officer. She had to report into the Kingston Office for meetings and social events.





16. Miss Foster said she applied for vacation leave which was approved by the HR Department as well as permission to proceed abroad. Upon her return from vacation leave she reported to the Kingston Office where she informed her supervisor at the Investigative Department that she was resuming duties, and proceeded to the HR Department. Miss Foster testified that Mrs. Camille Lennox, the HR Manager handed her a letter signed by the CEO, Dr. Kenroy Wedderburn, terminating her contract. Mrs. Lennox, she said, told her that she was not aware of the reason for her termination, and Miss Foster requested of her to arrange a meeting with the CEO. She was asked to turn in her badge and Closed User Group (CUG) phone, which she did and left the premises.
17. Miss Foster asserted that she completed a form sometime around July or August, indicating her interest in having her contract renewed and handed it to Mrs. Lennox, the HR Manager. She was encouraged to take her vacation leave before the expiration of her contract.
18. Miss Foster informed the Tribunal that neither Mrs. Lennox, her supervisor nor the Director of Investigation could shed any light on the reason for her termination. She made several attempts to have a meeting with Dr. Wedderburn to get "*some sort of explanation*" for her termination, but this did not materialise.
19. According to Miss Foster, the FLA had recognised her performance and professionalism, and she was acknowledged for her extraordinary efforts on the job. She said that although her contract explicitly stated that renewal was not automatic, she had a reasonable expectation that it would be renewed based on the "*favourable evaluations*". Miss Foster, under cross examination, maintained her position that she had completed a form indicating her interest in renewing her contract, and handed the form to the then HR Manager.





20. Miss Foster testified that since her termination, and despite her efforts at gaining employment, she remained unemployed for approximately ten (10) months and had to remove her son from boarding school because she could not support him financially. She eventually assisted a friend in setting up a business in Linstead, St Catherine and received a stipend of \$50,000 per month, however, after about four months she had to discontinue the trip from her home in Runaway Bay to Linstead because it proved uneconomical to sustain.
21. She obtained a job in July 2017 at Nutrition Products Limited (NPL), and remained at NPL for three(3) years, from 2017 to 2020, after which she migrated to the United States.

### **ISSUES**

22. The issues to be considered by the Tribunal are the following:
- Whether the termination clause in Miss Foster's Fixed Term Contract was valid, and if so, whether her termination was consistent with the terms of her contract
  - Whether, given the circumstances, was Miss Foster's termination fair and just and in conformity with the Labour Relations Code (the "**Code**") and good industrial relations practices.
  - In the event the Tribunal finds the dismissal unjustifiable, what would constitute a just and equitable award.

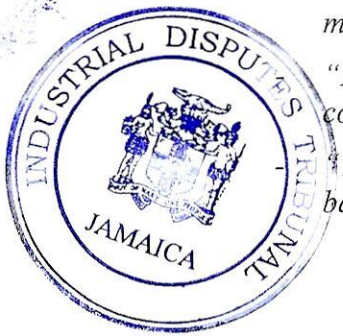
#### **A. Whether the termination clause in Miss Foster's Fixed Term Contract was valid, and if so, whether her termination was consistent with the terms of her contract.**

23. Miss Mabel Foster was engaged by the FLA as an Investigator for a three-year period from November 1, 2013 to October 31, 2016. The 'conditions of service' set out in the Agreement stated as follows:

- *"Your engagement shall be deemed completed on the last day of service unless by mutual agreement the period of engagement is extended."*

*"Renewal of the contract, while not automatic, will be subject to the requirement for continuation of service"*

*"Your continued employment is subject to your ability to pass a stringent security background check."*





24. The Agreement contained a provision for ‘**termination**’, and ‘**termination with cause.**’ Under ‘termination’ it specified that: “*Either party may terminate this Agreement by giving the other three (3) months’ notice in writing or by the Firearm Licensing Authority paying to the Employee three (3) months salary in lieu of notice.*” The ‘termination with cause’ provision stated that –

*“An employee if proven to be guilty [via conclusions of a Disciplinary/Grievance Committee] of acts or deviation from our code of conduct shall be liable to immediate dismissal and forfeits any right to notice/pay in lieu of notice.”*

25. Miss Foster, upon her return from vacation leave, was handed a letter by the Human Resource Department terminating her contract. The letter stated as follows:

*“September 8, 2016  
Miss Mabel Foster  
Lot 123 Lime Grove  
Cardiff Hall  
Runaway Bay P.O.  
St Ann.*

*Dear Ms Foster,*

***Re: Contract of Employment with the Firearm Licensing Authority***

*Pursuant to the termination clause of the above captioned contract, this serves to advise that your engagement as Investigator (SEG 1) with the Firearm Licensing Authority has been terminated effectively immediately.*

*You will be paid salary up to the end of your contract period (October 31, 2016) in lieu of notice, all unused vacation leave and accumulated gratuity up to September 8, 2016.*

*You are required to return all company-related items (security access card, identification card, CUG phone, files etc) to your Manager, Director or the Human Resource & Development Manager.*

*We thank you for your contribution to the Authority and wish you all the best in your future endeavors.*

*Yours truly,*

*Dr. Kenroy Wedderburn, JP  
Chief Executive Officer*



26. On the same day a Memorandum was sent by M.s Marsha Stephens, Director of Finance and Administration to Mr. Haleem Anderson, Financial Accountant advising that today (September 8, 2016) was the last day of Miss Foster's employment and that *"she is to be paid salaries up to October 31, 2016, accumulated gratuity payment up to September 8, 2016 and vacation leave amounting to 17 days."* No mention was made of the provision in the contract to pay her three (3) months' salary in lieu of notice.
27. FLA's contention was that Miss Foster was fully aware that her contract was for a fixed term, with a specified end date, and therefore, she could have held no 'legitimate expectations' that her contract would have been renewed. It cited Circular No. 15, dated May 8, 2012, from the Ministry of Finance and Planning under the subject heading: **Fixed-Term Contract Officers Policy Guidelines**, which sets out that termination "without cause" may take place where a contract is *"... terminated prior to the agreed expiration date by either party giving notice, or by the Employer paying the Contract Officer salary in lieu of notice..."* It noted that the notice period for contracts for three (3) or more years should be three (3) months. The determinable clause of Miss Foster's contract remains conformable to the guidelines contained in the Ministry's Circular.
28. The statutory provisions dealing with termination notice in respect of employment contracts are set out in Part II, Section 3 of the Employment (Termination and Redundancy Payments) Act (the **"ETRPA"**). Section 3(1) states the minimum period of notice an employer is obliged to give an employee upon termination of his or her contract. The relevant condition applicable for the minimum notice period in this case would relate to clause (a) of Section 3(1) which states that *"not less than two weeks' notice if his period of continuous employment is less than five years..."*
29. Notwithstanding the provisions of subsections (1) and (2) of the ETRPA, subsection (3)(b) clearly stipulates that there is nothing *"to prevent the parties to a contract of employment from providing, by agreement, for the giving of notice which is of longer duration than that of the relevant notice specified in those subsections to terminate the contract..."* Clearly in the matter at bar the parties agreed to an extension of the period of notice well beyond the two (2) weeks.



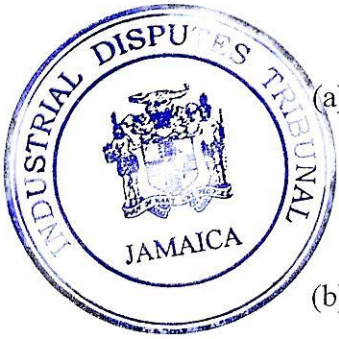


30. The provisions of subsection (4) and (5) bear some relevance in this case and is reproduced below:

*“(4) Where the contract of employment of any employee specifies a period, commencing on the date of commencement of the employment, as a probationary period, either party to the contract may, notwithstanding the provisions of subsections (1) and (2), terminate the contract without notice during the probationary period or, where the probationary period is more than ninety days, during the first ninety days thereof.*

*(5) This section does not affect any right of either party to a contract of employment to treat the contract as terminable without notice by reason of such conduct by the other party as would have enabled him so to treat it before the passing of this Act, or to treat a contract of employment for a fixed term as terminated at the expiration of the term:*

*Provided that -*



- (a) *if an employer does not terminate a contract of employment without notice during the first four weeks after he becomes aware of conduct by the employee by reason of which the employer has a right to terminate the contract without notice, he shall not thereafter terminate the contract without notice by reason of that conduct;*
- (b) *if the employment of an employee whose contract of employment is for a fixed term continues for four weeks after the expiration of the term, subsections (1), (2) and (3) shall thereafter apply to the contract as if it were a contract of indefinite period.”*

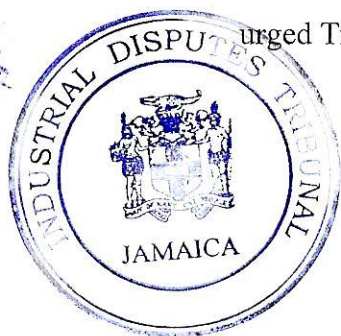
31. The statutory provisions governing employment contracts in Jamaica are limited to conditions set out above. Beyond that, we are obliged to rely on common law rulings to guide us in applying relevant legal principles to the facts of each case.
32. Miss Foster’s contract makes the distinction between ‘termination’ and ‘termination with cause’, which suggests, in the minds of the employer, that the dismissal under the former need not satisfy any potential fair reason or “**some other substantial reason**” for that matter. Counsel for the FLA argued in support of this contention, and even while conceding that the Company accepted the “**oversight**” in not providing Miss Foster with payment in lieu of notice, nevertheless, pleaded with the Tribunal to determine the dismissal as an unlawful rather than an unfair act, and referenced the case of **Clayton Powell v. The Industrial Disputes Tribunal and Montego Bay Marine Park Trust** to validate the point.

33. As far as we are aware, the Tribunal is not restricted to the common law position as set out in the **Clayton Powell's** case where the Court treated the matter as a wrongful or unlawful dismissal. As Sykes, J. (as he then was) puts it in the **Peter Jennings'** case:

*"...an employer can no longer say that because he acted in accordance with the terms of the contract, which would have been acceptable at common law, then he has acted justifiably. It does not matter what gives rise to the dismissal. It does not matter whether it was redundancy. It does not matter whether it was misconduct. Once the case comes to the IDT the common law approach is left at gate."*

34. Even then, the termination of Miss Foster's contract was not valid, in the sense that it was not in keeping with the provisions of her contract for her to be provided with payment in lieu of notice upon her termination. This, the FLA had acknowledged. However, is important to state that even if the payments were made in lieu of notice to Miss Foster at the time of the termination of her contract, the lawfulness of the act would not vitiate the powers of the Tribunal to consider an unfair dismissal claim under a Fixed-Term Contract. As the author of **Selwyn's Law of Employment, Twentieth Edition**, stated that even where a limited Fixed-Term Contract is not being renewed under the same contract, the dismissal *"must still be tested for fairness in terms of the reasonableness of the employer's action in not renewing the contract..."*[page 404]. In light of the above, it is therefore necessary for us give consideration to the reasonableness of Miss Foster's termination.

35. In doing so, we must, as the learned author of **The Law of Unfair Dismissal (3<sup>rd</sup> edition)**, urged Tribunals, to *"strike a balance"* between –



*"... the need of employers for protection against having to pay unfair dismissal compensation for genuine fixed-term employment which can be seen from the outset not to be ongoing... [like] construction workers retained for particular jobs. On the other hand, employees need to be protected against being deprived of their rights through ordinary employments being dressed up in the form of temporary fixed-term contracts."* [page 330]

36. The learned author went on to state the following:

*"... the fact that the employee's contract was from the start not assured of continuation beyond a fixed term [was] is a material factor to be considered in assessing the reasonableness of the decision not to renew. However, it also indicated that it would be wrong to consider that it was a conclusive justification for dismissal..."* [page 331]

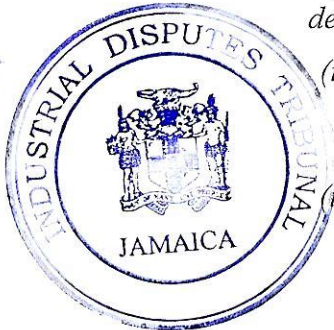


37. Reference to the **Clayton Powell's case**, in our view, was limited to the lawfulness of the dismissal, which rest squarely within the jurisdiction of the Court. The unique regime establishing the IDT could, from the authorities cited, cause a tribunal to determine and settle a dismissal claim as "unfair" even if it is legal in all respects. The fixed term nature of the contract is, therefore, not "*a conclusive justification*" for dismissal, and the Tribunal is empowered to "*test for fairness in terms of the reasonableness...*" of FLA's action, especially were we to presume that the terms of the contractual arrangement do not reasonably lead to the conclusion that this was a "*... form of temporary fixed-term contract(s)*".

**B. Whether, given the circumstances, was Miss Foster's termination fair and just and in conformity with the Labour Relations Code and good industrial relations practices.**

38. The Tribunal, operating within the confines given to it under the Act, must rely on the provisions of Section 12 to determine, where a dispute arises as to the termination of an employee's contract, whether the dismissal was justifiable or not in all the circumstances. Subsection (5)(c) of Section 12 states that –

*"if the dispute relates to the dismissal of a worker the Tribunal, in making its decision or award –*

- 
- (i) may, if it finds that the dismissal was unjustifiable and that the worker wishes to be reinstated... order the employer to reinstate him, with payment of so much wages, if any, as the Tribunal may determine;*
  - (ii) shall, if it finds that the dismissal was unjustifiable and that the worker does not wish to be reinstated, order the employer to pay the worker such compensation or to grant him such other relief as the Tribunal may determine;*

*(iii) -----*

*[Tribunal's emphasis]*

39. In the **West Indies Yeast case**, Smith, C.J. addressed the issue of "unjustifiable" or "unfair" insofar as it relates to the jurisdiction of the Tribunal, where he adopted the view of the learned author of Harvey on Industrial Relations and Employment Law, in stating that –

*"..even if a dismissal is justifiable at common law, it is not necessarily justified under the statute; it is possible for an employee to succeed in a*



*complaint of unfair dismissal even if he would lose in an action for wrongful dismissal."*

40. The Tribunal will be guided by the legal precedents adopted by the Courts as set out in the **West Indies Yeast** case [supra], where it was pointed out that:

*"... the employee has an interest in his job which is akin to a property right. A person's job can no longer be treated purely as a contractual right which the employer can terminate by giving an appropriate contractual notice."*

**(R .v. Minister of Labour and Employment, Industrial Disputes Tribunal, ex parte West Indies Yeast Co. Ltd. Jamaica Law Report, page 410.)**

41. The Honourable Chief Justice concluded, in reference to section 12(5)(c) of the Act, that:

*"In my opinion, in the cases in which they are used in s. 12(5)(c) of the Act... the words "unjustifiable" and "unfair" are synonymous and the use of one rather than the other merely shows a preference of the respective draftsman. In my judgement, "unjustifiable" in the section refers to the reason for dismissal and not the dismissal itself..."* **(Ibid. p. 410)**

42. In a ruling by the Court of Appeal in the **Village Resort** case, the Hon. Justice Rattray, P. had this to say:

*"In an industrial relations setting and applying the provisions of the Labour Relations and Industrial Disputes Act, the Regulations and the Code as well as the new thinking introduced by the legislation, the onus then shifted to the hotel management to establish that their actions were justified within the meaning given to that term by the Act. This meant, as the Tribunal and the Full Court found, whether in all the circumstances of the case, their actions were just, fair and reasonable."*

43. In light of the foregoing, and even with the 'unique regime' established under the Act, contemporary common law thinking appear to have coalesced around the justification for a termination in relation to Fixed-Term Contracts. In a case: **B.W. Bellis Limited v. Canterbury Hotel, Hospital, Restaurant, Club and Related Trades Employees Industrial Union of Workers**, the Court ruled thus.





*“It is quite likely that a dismissal which may be entirely lawful yet deserve at the same time the label “unjustifiable” will seem to be an elastic and novel concept for the lawyer. However, we do not think it can sensibly be defined in any precise way as a straight-out matter of law. Instead the conduct under examination in any particular case will have to be assessed in its own context and whether it does or does not involve elements of a sufficiently unsatisfactory nature as to attract the criticism that the dismissal was affected by features or was handled in such a way as to be unjustifiable, will then be decided virtually as an issue of fact.”*

44. While ‘unfair’ still remains a somewhat capacious term, the broad interpretation provided by the Courts entitles the Tribunal (a tripartite body recognised by the Court as comprising experts in the field of industrial relations) to come to its own conclusion as to what is just, reasonable and consistent with good industrial relations practices as set out in the Code.
45. The Code, which is “**as near to law as you can get**”, is derived from the Act. The Act compels the Tribunal to take the provisions of the Code into account where relevant. To quote section 3(4) of the Act:



*“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.”*

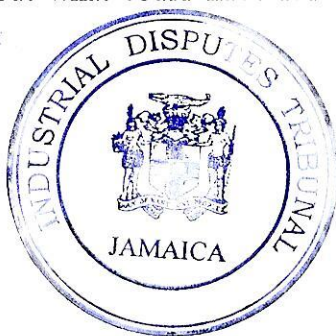
46. The Code expressly recognised the principles that:

- a. *“... work is a social right and obligation, it is not a commodity”*
- b. *“it is to be respected and dignity must be accorded to those who perform it”*
- c. *“industrial relations should be carried out within the spirit and intent of the Code”*
- d. *“Communication and consultation are necessary ingredients in a good industrial relations policy as these promote a climate of mutual understanding and trust...”*

47. Miss Foster, in her testimony, told the Tribunal that she was allowed to work from her home in St. Ann, with her contract stipulating that her continued employment would be “*subject to [your] her ability to pass a stringent security background check*”. Further, the sensitive nature of her duties as an Investigator, it would seem, requires a high standard of compliance with Government regulations, including the Official Secrets Act; the Access to Information

Act; the Corruption Prevention Act, among others and even where, based on the nature of Miss Foster's work, the implied contractual terms of good faith and confidentiality become far more consequential, the FLA demonstrated, by its action, the ultimate trust it reposed in her by allowing her to retain confidential files and documentation at home.

48. Beyond the confidential endorsement, Miss Foster's performance on the job was seen as extremely good. In the October 1, 2014 to June 30, 2015 Employee Performance Appraisal Review, the Department Head commented that her *"performance is of a high standard"* and that *"she is committed to the task at hand and she is a very good team player."* A subsequent review was done for the period July 1, 2015 to December 31, 2015, where she was recognised by the Department Head as *"a hard worker who consistently perform well at meeting performance targets."*, and by the Human Resources Department, as an employee who *"continue to uphold the vision of the FLA with a positive performance."*
49. Miss Foster testified that she was asked by the HR Manager to indicate whether she had an interest in having her contract renewed, which she did; however, this was challenged by the FLA as they argued that it was not a practice consistent with their policy. Other aspects of Miss Foster's testimony remained incontrovertible, for instance, her several attempts to communicate with the CEO to get an explanation as to the fairness 'in terms of the reasonableness of FLA's action in not renewing the contract' where neither the HR Manager, her supervisor nor the Director of Investigation could provide her with an explanation.
50. It is not sufficient, in our opinion, to rely on the termination clause in the contract to terminate the services of Miss Foster. No evidence has been provided to suggest that Miss Foster was anything but an admirable worker and that there was any issue with her general conduct. The manner of her dismissal, we believe, contravenes the spirit envisioned in the Code, as very little if at all any 'respect and dignity was accorded to her'. The common law imposes a burden on the employer to show, in a case of 'unfair dismissal', the reason or reasons for the dismissal, and not only was this not provided to Miss Foster in the first instance, but subsequent attempts to find out what could have led to the summary termination of her contract, were ignored.





51. In fact, given the circumstances, Miss Foster had a legitimate expectation that her contract would have been renewed. Mr. Anderson, it would seem, shared similar sentiments about harbouring “legitimate expectations” in his own situation when he told the Tribunal that it was his practice to turn up for work even after his contract had expired.

52. The Tribunal holds the view that the Act and the Code were intended to cure the ills caused by the imbalance between the strength of the employer versus the worker, to reflect the modern approach of society to the status of the worker and to underscore the interest that the worker has in his employment.

53. Lord Hoffman, in **Johnson v Unisys** [2001] puts it eloquently when he opined that:

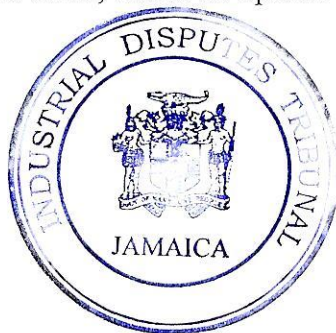
*“... over the last 30 years or so, the nature of the contract of employment has been transformed. It has been recognised that a person’s employment is usually one of the most important things in his or her life. It gives not only a livelihood but an occupation, an identity and a sense of self-esteem...”*

54. As Brooks, JA argued in **Edward Gabbidon and Sagcor Bank Jamaica Limited**, [2020] **JMCA Civ 9** “*the protection from unfair dismissal...*” is provided for in “*...Part 1 second paragraph of section 2 of the code.*” [Tribunal’s emphasis].

55. The Tribunal, having conducted a full and objective view of the circumstances surrounding the termination of Miss Foster’s contract, have conclude on the facts presented that Miss Foster’s dismissal was unfair, unjust and unreasonable, and not in keeping with good industrial relations practices as envisioned by the Code.

**C. In the event the Tribunal finds the dismissal unjustifiable, what would constitute a just and equitable award**

56. In determining compensation for Miss Foster’s unjustifiable dismissal, the Tribunal has taken note of the dictum of Williams, J. in the case of **Garnett Francis v. IDT and Private Power Operators**, [2012] JMSC Civil 55, where he opined that there exist –

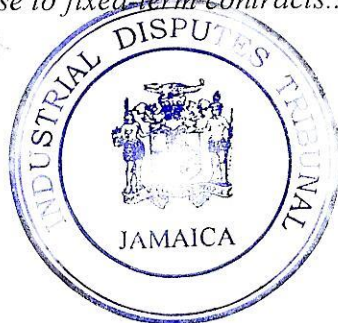


*“...a discretion entrusted to the Tribunal where the level of quantum of compensation is concerned; and it is a wide and extensive discretion... reveals no limit or restriction placed on the exercise of the discretion and no formula, scheme or other means of binding or guiding the Tribunal in its determination of what might be a level of compensation or other relief it may arrive at as being appropriate.”*  
[page 21)

57. Equally, we are aware that in the exercise of such discretion reasonableness must prevail in ensuring that proportionality is maintained and the award is reasonable under the just and equitable rule. In doing so, we take note of the fact that –

- a. There was no prior conduct on the part of Miss Foster which would make it just and equitable to reduce the basic award for her unjustifiable termination;
- b. The manner of her dismissal is, in the minds of the Tribunal, such that a just and equitable consideration must be taken into account regarding the loss sustained as a consequence of the dismissal, insofar as that loss is seen as attributable to FLA’s action;
- c. Miss Foster was employed on a three-year Fixed-Term Contract, and based on her performance and conduct reasonably harboured a legitimate expectation that her contract would have been renewed;
- d. Miss Foster had, for a period, mitigated her loss.

58. The nature and purpose of Fixed-Term Contracts in the employment relationship has been the subject of extensive research by the International Labour Organisation (ILO). The ILO argues that this kind of arrangement typifies “*special forms of temporary dependent employment*”, and that they are “*distinct from regular employment that is open-ended, “permanent”, or “of indefinite duration.”*” In the ILO Recommendation 1982 (No. 166), tripartite bodies across the globe are encouraged to provide “*a legal framework aimed at limiting the abusive recourse to fixed-term contracts...*” The guidelines are -





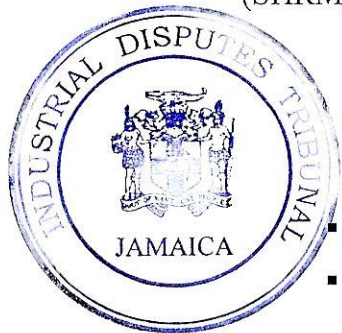
*"(a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;*

*(b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;*

*(c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration"*

59. Countries such as France, Germany, Spain, Belgium, the Netherlands, Indonesia, Czech Republic, Greece and Luxembourg limit the number of Fixed-Term Contracts authorised by law. In the United Kingdom an employee automatically becomes a permanent employee after four (4) years of continuous fixed-term employment, unless the employer can justify not doing so.

60. In fact, in a 2019 article published by the Society for Human Resource Management (SHRM)<sup>1</sup>, it noted that –



*"In Europe, all member countries are subject to the EU Directive 1999/70/EC of June 1999 which requires the member countries to curtail the abuse of recurring fixed-term employment contracts by passing local laws that introduce one or more of the following measures:*

- *Objective reasons justifying the renewal of such contracts or relationships*
- *The maximum total duration of successive fixed-term employment contracts or relationships*
- *The number of renewals of such contracts or relationships. "*

61. While the Jamaican legislation does not yet provide a legal framework to ***"curtail the abuse of recurring fixed-term employment contracts"***, some discretion is allowed this Tribunal, following from the facts, to determine whether Miss Foster's contract would have been renewed, and to determine what would be a 'fair and just' remedy under the circumstances. We once again turn to the dictum of Sykes, J. (as he then was) in the **Peter Jennings'** (supra), where he said: -

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<sup>1</sup> Johan Lubbe (April 2019). Requirements for Fixed-Term Contracts Vary Around the Globe.  
<https://www.shrm.org/topics-tools/employment-law-compliance/requirements-fixed-term-contracts-vary-around-globe>

*“The IDT can award remedies not known to common law. It is a tribunal of original jurisdiction to settle disputes. Great emphasis was paid to the terms of the contract but as the authorities now show that is not the end of the matter. General common law in the area of employment did not include notions of equity, justice and fairness.” [Tribunal’s emphasis]*

62. We may be diffident and endearing in our reliance on the views of Sykes, J (*Ibid*) when he opined that -

*“...no court has the authority to say that the IDT should have found one fact as opposed to another once there is evidence to support the facts found by the IDT... [and] no court can tell the IDT what weight to give to any fact or inference drawn from a fact.”*

63. Having examined the circumstances of the case ‘on all fours’, the Tribunal feel obliged to draw the following conclusion on the basis of the evidence as is necessary on the facts:

- a. The intent and spirit of the Code to promote dignity and respect in the employment relations, and to establish clear lines of communication as a necessary condition for good industrial relations practices, were clearly violated by FLA;
- b. This clear violation of the Code, when viewed against the provisions of Section 12(5) of the Act makes the dismissal “unjustifiable”;
- c. We must give just and equitable considerations to the circumstances surrounding Miss Foster’s termination, having regard to the loss she sustained insofar as it is wholly attributable to the FLA’s action;
- d. Although Miss Foster’s contract was for a fixed term, Mr. Anderson, in his testimony, stated that the ‘continuation of a contract beyond the expiry date’ would be based on an evaluation process involving the employee and his/her supervisor as a condition precedent, although it would not be determinative;
- e. Mr. Anderson admitted under cross examination that Miss Foster’s performance evaluations were in excess of 75 percent, which we believe, would reasonably lead to a legitimate expectation on her part that the contract would have been renewed;





- f. Miss Foster's exceptional performance led to commendations from the FLA Board, and the asserted trust which the management reposed in her was demonstrated in their willingness to allow her to keep sensitive and confidential files at her home;
- g. Taking all those facts into account, and guided by the opinion of Sykes, J. (*supra*), without more, "*the inference drawn from the(se) fact(s)*" is that the circumstances under which her contract was terminated was unfair and unjust, and that the 'unique' regime under which the Tribunal operates, allows us to fashion a remedy unknown to the common law;
- h. In that regard, the assertion of Williams, J. in the **Garnett Francis'** case (previously cited), provides the Tribunal, we believe, with the powers to consider an assessment of the loss to include, as well, the manner of Miss Foster's dismissal.<sup>2</sup>



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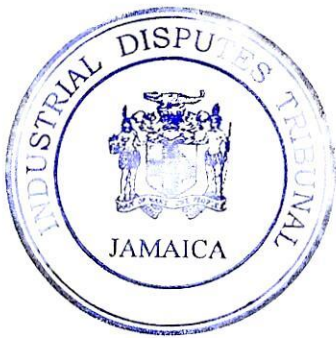
<sup>2</sup> See Halsbury's Law of England, Fourth Edition, para. 639, page 421.

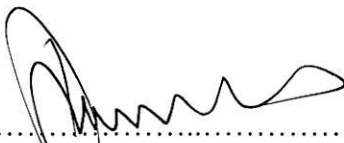
**AWARD**


64. Pursuant to Section 12(5)(c)(ii) of the Act, the Tribunal finds that the dismissal of Miss Mabel Foster by her employer, FLA, was unjustifiable and order that she be compensated as follows:


- a. Three (3) months' salary in accordance with the terms of her employment contract in circumstances where FLA terminated her services; and
- b. The amount of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) as determined.

Dated this 12<sup>th</sup> day of May, 2025



  
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**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