

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 29/2020

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SETTLEMENT OF DISPUTE

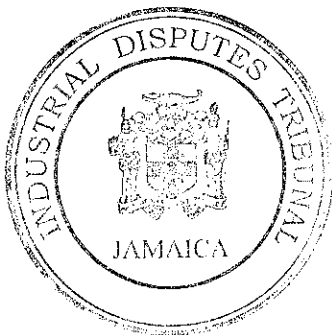
BETWEEN

GUARDIAN LIFE LIMITED

AND

CATHERINE ALLEN

***AWARD***



I.D.T. DIVISION

HON. MRS. JUSTICE MARJORIE COLE-SMITH (Ret'd.)- CHAIRMAN

MR. ERROL BECKFORD - MEMBER

MRS. CHELSIE SHELLIE-VERNON - MEMBER

APRIL 28, 2022

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**GUARDIAN LIFE LIMITED  
(THE COMPANY)**

**AND**

**CATHERINE ALLEN  
(THE DISMISSED WORKER)**

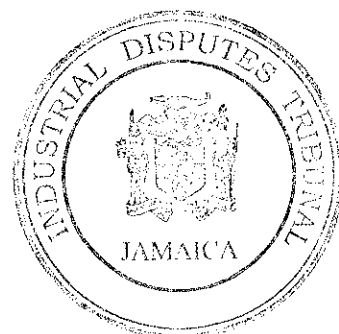
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**REFERENCE:**

By letter dated December 23, 2020 the Honourable Minister of Labour and Social Security, pursuant to Section 11A (1)(a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

*“To determine and settle the dispute between Guardian Life Limited on the one hand,  
and Catherine Allen 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:

Hon. Mrs. Justice Marjorie Cole-Smith (Ret'd.)	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2) (c) (ii)
Mrs. Chelsie Shellie-Vernon	-	Member, Section 8(2) (c) (iii)

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

The **Company** was represented by:

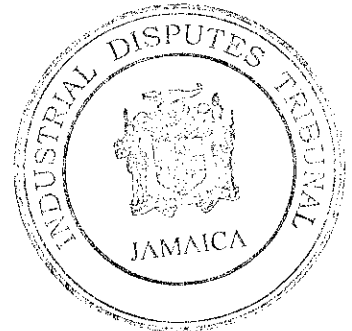
Ms. Angela Robertson	-	Attorney-at-Law
Mr. Christopher Cowan	-	Attorney-at-Law
Ms. Claudette Ashman	-	Vice President, Legal, Compliance and Risk Management
Ms. Debbie Livingston	-	Vice President, Corporate Resources

The **Dismissed Worker** was represented by:

Mrs. Georgia Gibson-Henlin, Q.C.	-	Attorney-at-Law
Ms. Stephanie Williams	-	Attorney-at-Law
Ms. Ariana Mills	-	Attorney-at-Law

### **In attendance**

Ms. Catherine Allen	-	Dismissed worker
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### **SUBMISSIONS AND SITTINGS:**

Briefs were submitted by both parties who made oral submissions during fifteen (15) sittings held between August 31, 2021 and March 7, 2022.

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

Guardian Life Limited (hereinafter referred to as the Company) is incorporated under the Companies Act of Jamaica and has its registered office at 12 Trafalgar Road, Kingston 5. The Company is an insurance Company and is engaged inter alia in the underwriting of all classes of long-term insurance business.

As a limited liability company it is governed by the provisions of the Companies Act, the Insurance Act and the Financial Services Commission Act.

Ms. Catherine Allen was employed to the Company as its Assistant Vice President and Actuary. The terms of her employment contract were confirmed in writing by letter dated September 14, 2004. She commenced work on January 3, 2005.

On August 15, 2018, Ms. Allen received a letter from the Company terminating her employment. Ms. Allen disputed her termination and consequently, the matter was referred to the Ministry of Labour and Social Security. No resolution was reached and hence the matter was referred to the Industrial Disputes Tribunal for determination and settlement.

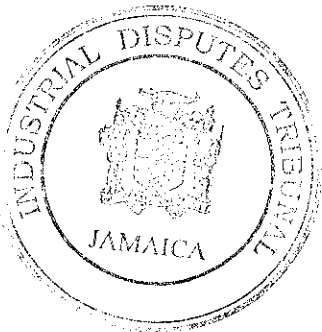
**THE COMPANY'S CASE BASED ON ITS BRIEF AND ORAL SUBMISSION:**

1. In presenting its case, the Company called two (2) witnesses; Mr. Ravi Tewari, Chief Executive Officer of Guardian Holdings Limited and Chairman of Guardian Life Limited who has been involved in insurance since 1992 and has been practicing as an Actuary since 1998 and Mrs. Audrey Basanta-Henry, Former Vice President of Corporate Resources who had responsibilities for Human Resources and other Departments.
2. By letter dated September 14, 2004, Ms. Catherine Allen was offered employment in the position of Assistant Vice President and Actuary at Guardian Life Limited. On April 1, 2007, as a result of a job evaluation exercise, Ms. Allen was named as a Vice President having been appointed as the Company's Appointed Actuary under the Insurance Act on November 1, 2006. Excerpts of Ms. Allen's Employment Letter, states:

Clause 15

**"Confidentiality"**

*You agree, except in the proper course of your duties, not to divulge to any person, firm or company, and to use your best endeavours to prevent unauthorized publication or disclosure of any confidential information concerning the business or finances of this Company or any of its dealings, transactions or affairs or any such confidential information concerning any of its Subsidiaries or Associated Companies or of any of its clients.*



*Except in the proper course of your duties, all notes and memoranda of any confidential information concerning the business of the Company or its Subsidiaries or Associated Companies or any of its clients, suppliers, agents or distributors which shall be acquired received or made by you during the course of your employment shall be the property of the Company and shall be surrendered by you to someone duly authorized in that behalf at the termination of your employment or at the request of the Board at any time during the course of your employment... ”*

Clause 16

*Termination of Employment*

*Your employment may be terminated:*

- I. by the Company without notice or payment in lieu of notice for cause or if you are guilty of any gross default or misconduct in connection with or affecting the business of the Company or in the event of any breach or non-observance by you of any provision which is materially detrimental to the Company's interest.*
- II. at any time by either party giving to the other at least three (3) months notice in writing.*

...

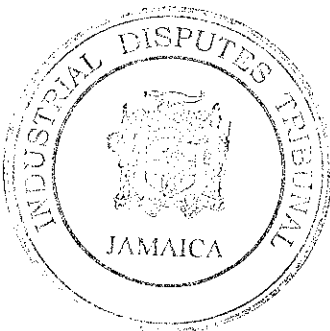
*You will be required to perform your duties in accordance with the terms and conditions established by Guardian Life Limited from time to time. ’*

3. The Company has a Code of Ethics that guides the conduct of its Officers. This Code of Ethics was signed by Ms. Allen and it states in part that:

*‘An Officer shall, in discharging his office:*

...

*Treat in confidence all matters and information involving Guardian Life Limited, the Board of Directors, its committees and the employees of Guardian Life Limited, and not disclose same where it is not in the public interest or domain unless sanctioned by the Board of Directors so to do, and refrain from entering into any transaction in which the Officer makes use of confidential information in order, directly or indirectly, to obtain a benefit or advantage for the Officer or anyone else, other than Guardian Life Limited or a subsidiary thereof.’*



4. The Company also has a Code of Business Conduct which further reinforces the issue of confidentiality. It states in part the following:

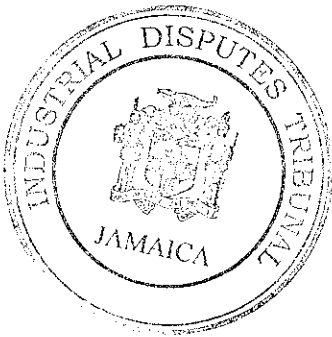
*'Privacy & Confidentiality*

*The Company will take all reasonable steps to preserve the confidentiality of information concerning customers; employees and all other stakeholders and will take disciplinary action against any employee who causes the company to be in breach.*

*Employee Obligations*

*All employees are expected to fully comply with the following requirements.*

1. ...
2. *Confidentiality – Employees are to keep confidential all information and records acquired during the course of their employment and shall not; except in the proper course of their duties, share such information and records with anyone; including co-workers who are not entitled to have access. This obligation of confidentiality will remain even after individuals cease to be employed to the company.*



*All information and records shall remain the property of the company and shall be surrendered to someone duly authorised; on separation from the company or on request at any time during the course of employment.'*

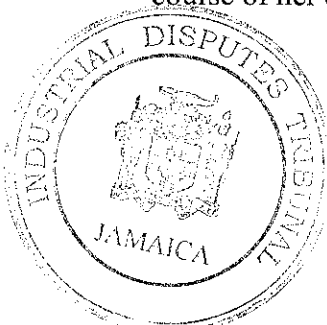
5. The position of Appointed Actuary is a senior position in any Insurance Company. Ms. Allen had both a contractual and statutory relationship with the Company which placed her in a sensitive position in which her duties and obligations to the Company exceeded that of the average employee and therefore she would be expected to conduct herself in accordance with the highest ethical and professional standards.
6. It is the evidence of Mr. Tewari that the Company took the decision to outsource the position of Actuary sometime in April 2018. This, he said was to allow the Company to benefit from a wider pool of Actuaries and also in line with current trend of other insurance companies in the Caribbean.
7. On August 15, 2018, the decision to make Ms. Allen's position redundant was conveyed to her at a meeting. She was handed a letter dated August 15, 2018, which stated inter alia as follows:

*"We advise that the company has taken a decision to outsource the work for which you are employed and as a result, your position will be made redundant with effect from August 15, 2018 and your appointment as Actuary for the Company revoked as of this date."*

8. The letter of August 15, 2018 had a signature clause at the bottom for Ms. Allen to sign, confirming the full and final settlement of all obligations owed to her by the Company. The clause reads as follows:

*"I confirm that the payment and benefits mentioned in this letter represents full and final settlement of all obligations on the part of the Company in respect of my employment and the termination thereof."*

9. Ms. Allen signed the letter of August 15, 2018 but struck out the part in the letter that reads *"full and final settlement"*. By email dated August 27, 2018 from Mrs. Basanta-Henry, Ms. Allen was informed that as a result of her striking out the words *"full and final"* they are unable to act on this amended letter.
10. It is the evidence of Mrs. Basanta-Henry that when Ms. Allen was given the letter, she requested of her to return the Company's property including the laptop assigned to her. She accompanied Ms. Allen to her office to retrieve the laptop. However, there were attachments to it and she therefore requested the I.T. Department to disconnect and retrieve it.
11. Mrs. Basanta-Henry testified that on August 17, 2018, as a result of a whistle blower, she was advised that information of very confidential nature was leaked by an email to external partners. She however, failed to locate the specific email that she was looking for on the laptop. She did however, see other emails sent by Ms. Allen which raised concerns by the Company. At this point, she (Mrs. Basanta-Henry) communicated what she discovered to Mr. Eric Hosin, President and asked him if he had given Ms. Allen permission to do so. His response was that no such permission was given by him. He instructed her to put the laptop in a safe location.
12. The unauthorised disclosure by Ms. Allen of confidential information and records acquired during the course of her employment was contrary to the interests of the Company's policy holders.



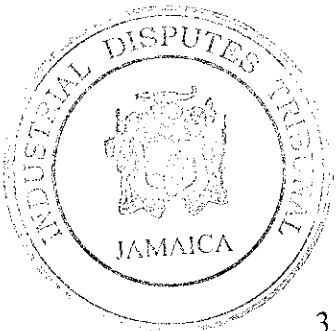
13. The Company had grave concerns as to whether and the extent to which confidential information had been shared with unauthorized persons outside of the Company. Hence, a decision was made to have a third party conduct an audit/investigation of the various emails on the Company's laptop which was assigned to Ms. Allen during her employment.
14. The Company eventually engaged the services of the Mintz Group, an independent international firm who conducted a forensic examination of the laptop. The Mintz Group prepared a report which indicated that Ms. Allen had breached the terms and conditions of her employment, company policy as well as her statutory obligations. These breaches concerned the unauthorised disclosure by Ms. Allen of confidential Company information to third parties including competitors of the Company. The findings were discussed by the management and a decision made to share the report with Ms. Allen.
15. By letter dated October 18, 2018, the Company wrote to Ms. Allen attaching the report of the audit and advised her that her actions constituted a breach of the terms of her contract of employment and other breaches and were grounds for summary dismissal. The letter further stated that *"in the circumstances, the company is considering terminating your employment for cause. However, before coming to a decision, we invite your comments and provide you with an opportunity to respond. Please let us have your response no later than October 26, 2018. "*
16. It is the Company's case that Ms. Allen did not respond neither did she request any additional time in which to do so.
17. Mr. Tewari testified that the sharing of confidential information could have a negative effect on the operations of the Company. Ms. Allen in sharing this information was in breach of several of her obligations, the Company had no alternative other than to take action against her.
18. He further stated that with respect to one particular piece of information shared i.e. the Medicus Spreadsheet which, contained a list of all the customers to which the Company provides insurance services, as well as the premiums and claims paid, this information, he testified was not only confidential to the Company but also to its clients, and therefore, being in the hands of competitors could give them a competitive edge in the pricing of its insurance products.





19. The sharing of the Profitability Study which analyses and shows the level of profitability for each product sold by the Company is highly confidential and not available to the public. The dissemination of this document to a competitor would allow them to gauge the financial scope and position of the Company giving them a strategic competitive advantage. So confidential is this particular document that only a few senior employees had access to it and it is held '*under lock and key*'.
20. Based on the position Ms. Allen occupied, she had access to documentation and information of the most sensitive and confidential nature. The Company therefore, required absolute trust and confidence in her. Her actions of disseminating the mentioned information without authorization eroded the trust and confidence the Company demanded of her.
21. By letter dated November 1, 2018, Ms. Allen was informed that the Company, having considered the evidence now available and having taken legal advice, has decided to terminate her employment effective August 15, 2018 summarily and for cause.
22. Three of the cases that the Company referred to in its submissions are:

1. the **Williams v. Leeds United Football Club Ltd [2015] EWHC 376 (QB)** where having given an employee notice, the employer club summarily dismissed him following the discovery of actions by the employee which constituted gross misconduct. The Court found in this case that the club was entitled to rely on conduct discovered after the dismissal to justify the dismissal,
2. the **Polkey (A.P.) v. A.E. Dayton Services Limited (Formerly Edmunds Walker (Holdings) Limited (1987) UKHL J 1119-2** where what is of fundamental importance in determining whether the dismissal of an employee was procedurally fair is whether it can be said that the employer was reasonable in taking the action that it did. The reasonableness of action is dependent on the particular facts and circumstances with due regard for the overall effect of particular decisions.
3. the **Industrial Dispute Tribunal v. University of Technology University Jamaica and University of Allied Workers Union SCCA 71 & 72/2010** where the Industrial Disputes Tribunal is entitled to take a fully objective view of the entire circumstances of

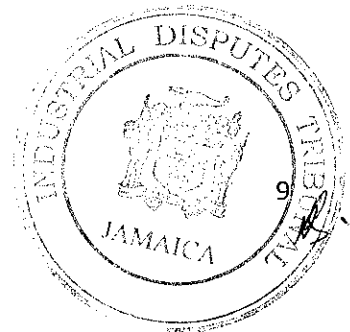


the case before it, rather than concentrate on the reason given by the employer. It is to consider matters that existed at the time of dismissal, even if those matters were not considered by, or even known to, the employer at the time of dismissal.

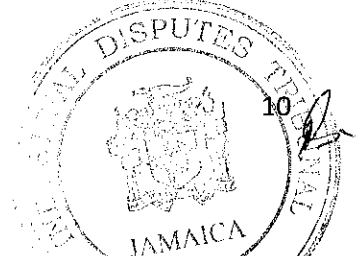
23. Once there is evidence of gross misconduct on the part of the employee during his/her term of employment, whether that misconduct is discovered during the term or thereafter, the employee cannot escape the consequences of this misconduct.
24. Mrs. Basanta-Henry, in her evidence, indicated that at the time of Ms. Allen's dismissal (August 15, 2018) the Company was unaware of the fact that the employee was disseminating its confidential information. The Company is entitled to consider the conduct of the employee while being employed, even if this conduct is discovered subsequent to the dismissal.
25. The Company submitted that in the instant case it has done all within its power to afford the employee natural justice, having been made aware of her gross misconduct. The letter of October 18, 2018 expressly invited a response to the findings contained in the report. This opportunity was however not accepted by Ms. Allen. The failure of Ms. Allen to respond left the Company with no alternative in the circumstances other than to terminate for cause. Having discovered the misconduct of Ms. Allen and given the employer's right to change the basis for termination and the jurisdiction of the Tribunal to consider facts which were known to the employer at the time of termination, it is submitted that the Company adopted a fair process in changing the basis of the termination of Ms. Allen's contract of employment for cause.
26. The Company submits that the Tribunal is bound to accept its case as presented and Award that Ms. Allen was justifiably dismissed and that she is not entitled to any compensation accordingly.

**DISMISSED WORKER'S CASE BASED ON ITS BRIEF AND ORAL SUBMISSION:**

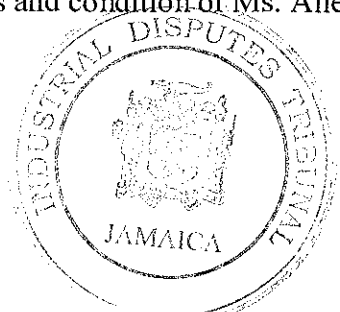
27. The Dismissed Worker, Ms. Catherine Allen did not call any witness but in presentation made on her behalf at the Tribunal, made submissions in support of her contention that the Company unjustifiably terminated her employment. It is Mrs. Georgia Henlin-Gibson's submission that they are not challenging the reason for the dismissal, but the manner in which it was done.



28. Ms. Catherine Allen served the Company for approximately thirteen (13) years prior to her termination of employment.
29. On August 15, 2018, Ms. Allen was summoned to a meeting with Mr. Eric Hosin, President of Guardian Life Limited and the Human Resource Vice President Mrs. Audrey Basanta-Henry. She was advised that her position was being made redundant effective immediately and she was handed a letter dated August 15, 2018. After the meeting she was met at her office by Mrs. Audrey Basanta-Henry and the Vice President of Information Technology. The Vice President of Information Technology took control of her laptop.
30. The termination letter required that she sign and return it. She did so but crossed out the line that said "*full and final settlement*". She has not returned to work since that date and none of the sums stated in the letter were paid to her.
31. By letter dated October 18, 2018, Ms. Allen was informed that the Company was considering terminating her for cause. The basis of the consideration of termination for cause was alleged to be that the Company had done investigations on her laptop and found that she breached the confidentiality clause in her employment contract. The Company also provided her with a report prepared by the Mintz Group detailing the alleged improprieties.
32. Before Ms. Allen had the opportunity to respond to the allegations in the letter dated October 18, 2018, she received letter dated November 1, 2018 which rescinded the letter of August 15, 2018 and alleged that Ms. Allen is terminated for cause. It further advised her that she would not be paid any of the ex gratia payments or otherwise as stated in letter dated August 15, 2018.
33. Ms. Allen remained terminated as there was no reinstatement. She remained terminated without notice, without cause and without payment in lieu of notice.
34. The Company in terminating Ms. Allen, continued on a course that was inconsistent with good industrial relations and the Labour Relations Code. She was not given sufficient opportunity to respond to the allegation that she had breached her contract of employment or to participate in a disciplinary hearing in order to determine whether the breach was established. She was also not provided with a right of appeal.



35. The email from Mrs. Basanta-Henry dated August 27, 2018 claims not to proceed with the redundancy and purports to withdraw the redundancy. Ms. Allen was unfairly terminated on August 15, 2018 and there was nothing to withdraw on November 1, 2018.
36. It is the submission of the Dismissed Worker's Representative that the case of **Williams v. Leeds United Football Club Ltd. [2015] EWHC376QB** is not applicable to this case as the discovering of actions and the subsequent dismissal for cause was identified and actuated while the employee was working through his notice period. At the time of his dismissal for cause he was still an employee of the company. On October 18, 2018 when the Company commenced its disciplinary proceedings and on November 1, 2018 when they purported to change the terms of termination, Ms. Allen was no longer employed to the Company.
37. The case of **Polkey (A.P.) v A.E. Dayton Services Limited v Kelly** that is being relied on by the Company does not support its case. The Court in Polkey was at pains to emphasize that the relevant considerations in determining whether the dismissal was fair were the facts and the circumstances that existed at the time of the dismissal. The time of the dismissal in the instant case was August 15, 2018.
38. The circumstances that existed at August 15, 2018 is the relevant consideration for the Tribunal as this is the date when Ms. Allen was dismissed. Any events that occurred subsequent to that date, cannot be taken into account in determining whether Ms. Allen's dismissal was fair or unjustifiable. This was confirmed by the dictum of the Court in Polkey.
39. At the time that the Company sought to commence disciplinary proceedings against Ms. Allen she was no longer an employee of the Company. The Company did not have any jurisdiction over Ms. Allen and so the purported termination of Ms. Allen's appointment was null and void.
40. Ms. Allen was not consulted neither did she participate in the process. In the circumstances, it cannot be said that she is at fault or that her conduct in any way contributed to the termination of her employment on August 15, 2018. It is the submission of Mrs. Henlin Gibson-Henlin, that the dismissal effected by the Company was in a manner contrary to the terms and condition of Ms. Allen's employment contract and amounts to a breach of natural justice.



41. Based on the foregoing the Dismissed Worker's Representative asked that the Tribunal finds that Ms. Allen was unjustifiably dismissed.

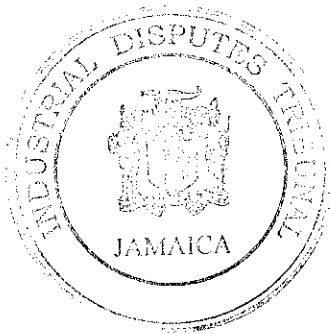
### **TRIBUNAL'S RESPONSE AND FINDINGS:**

42. The Tribunal having heard and examined the evidence both viva voce and documentary is now tasked with the responsibility of determining whether the Company was justified in the termination of the employment of Ms. Allen and was the termination in keeping with fair industrial relations practices.

43. The Tribunal, before seeking to address the issue finds it noteworthy to make reference to the following:

- case of **Regina v Industrial Disputes Tribunal ex parte Palace Amusement Company (1921) Ltd. Suit M. 43/1981** page 3, paragraph 1 where Parnell J. stated:

*"Under section 20 of the Act, the Tribunal is permitted to regulate its procedure and proceedings as it thinks fit. But this permission is subject to the provisions of the Act. However, this power does not permit the Tribunal to allow a trade union official who appears before it to give an eloquent and lengthy address which is laced with facts which have not been proved and in which the employer was given no opportunity to challenge by way of cross-examination or otherwise."*



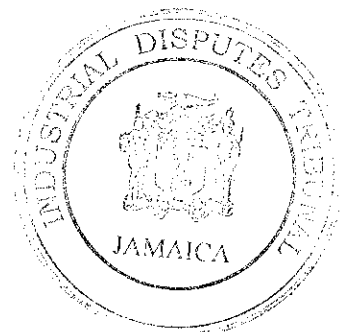
In the instant case, Mrs. Gibson-Henlin was referred to the abovementioned case by the Panel, however, she choose not to call any witness. The Company was not given the opportunity to put its case to the witness and the Tribunal being a fact finder was unable to test the evidence of Ms. Allen.

- Mrs. Gibson-Henlin in her submissions informed the Tribunal that she was not challenging the reason for dismissal but rather the manner.

44. The evidence before this Tribunal is that on August 15, 2018, Ms. Allen was called to a meeting and was handed a letter making her position redundant. It is the evidence of Mrs. Basanta-Henry that on August 17, 2018, she had reason to believe that Ms. Allen shared confidential emails with external

parties. As a result, the Company took the decision to conduct an audit. The Audit revealed that Ms. Allen disclosed confidential Company information to third parties including to a major competitor of the Company.

45. The Tribunal is mindful of the evidence of Mr. Tewari that an Actuary is not permitted to divulge any information to any other Actuary unless it is a statutory requirement. As an Actuary, Ms. Allen is expected to uphold the integrity of the profession.
46. Based on the evidence presented and the position that Ms. Allen occupied, the sharing of such highly confidential information could have had a detrimental impact on the Company.
47. The evidence of Mr. Tewari is that the information shared by Ms. Allen with a competitor could allow them (competitor) to gauge the financial scope and position of the Company giving them a strategic competitive advantage. Such evidence was not countered or challenged by Ms. Allen and hence, the Tribunal has no alternative but to accept same.
48. The Tribunal also accepts the evidence of the Company that the dissemination of such confidential information by Ms. Allen would have eroded the trust and confidence of the Company.
49. Notwithstanding, the fact that the Company may have had cogent reasons to terminate the employment of Ms. Allen, the Tribunal, being a creature of statute, must take into consideration the Statutory requirements. The Company having discovered on August 17, 2018 that Ms. Allen committed a serious breach of confidentiality, as is stated in the evidence of Mrs. Basanta-Henry, did not revoke the termination nor reinstate Ms. Allen. It was not until October 18, 2018, subsequent to receiving the Mintz Report that Ms. Allen was written to and a copy of the Report submitted to her for her to comment. Ms. Allen did not respond and the Company wrote to her on November 1, 2018 to say the termination date remains the same but the reason was now for cause.
50. The Tribunal will now have to turn its focus on the gargantuan question which is, can the Company after terminating Ms. Allen, now change the basis for the termination to include a conduct by Ms. Allen that was subsequently discovered?



51. The Tribunal finds the case of Industrial Disputes Tribunal v. University of Technology et al SCCA 71 and 72/2010 very relevant, where Brooks JA stated:

*“the IDT is entitled to take a fully objective view of the entire circumstances of the case before it, rather than concentrate on the reasons given by the employer. It is to consider matters that existed at the time of dismissal, even if those matters were not considered by or even known to the employer at that time.”*

52. At the time Ms. Allen shared highly confidential information, she was in the employment of the Company, and as such the Tribunal has to consider the breach committed by her.

53. The Tribunal agrees with Mrs. Gibson-Henlin’s submission in the case of **Williams v. Leeds United Football Club Limited [2015] EWHC 376 QB**, where she stated that this case is not applicable in the instant case, as the discovery of actions and the subsequent dismissal for cause was identified and actuated while the employee was working through the notice period. In addition, this case has to do with wrongful dismissal while the Tribunal deals with unfair dismissal.

54. The Tribunal also concludes that the case of **Polkey (A.P.) v. A.E. Dayton Services Limited (Formerly Edmunds Walker Holdings) [1987] UKHL 1119-2** is not applicable in this case, as the case suggests that the fundamental importance in determining if a dismissal was fair is whether the employer was reasonable in taking the action that was done. The Polkey case relies on the Employment Protection (Consolidation) Act 1978, which is a UK Statute which the Tribunal does not rely on as Jamaica has its own legislative frame work (in this case, the Labour Relations and Industrial Disputes Act and the Code) that guides it on the matter of dismissal, in particular unfair dismissal.

55. On August 17, 2018 when the Company discovered that Ms. Allen may have committed a breach, it should have acted, and revoked the termination. Upon receiving the Mintz Report, it could have at that time, taken disciplinary action against Ms. Allen.

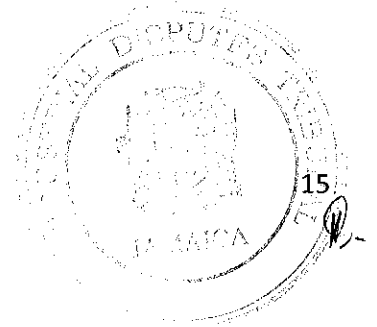
56. The Tribunal is duty bound to have regard for the Labour Relations Code. Section 3(4) of the Labour Relations and Industrial Disputes Act, which states:

*“A failure on the part of any person to observe any provision of a labour relations code which is for the time being in operation shall not of itself render him liable to any proceedings; but in any*



*proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or a Board to be relevant to any question arising in the proceedings shall be taken into account by the Tribunal or Board in determining that question."*

57. The purpose of the Labour Relations and Industrial Disputes Act and the Labour Relations Code is to promote good labour relations which include (inter alia) the principle of developing and maintaining good personnel management techniques designed to secure effective co-operation between workers and their employers and to protect workers and employers against unfair labour practices.
58. In keeping with good industrial relations best practices it was incumbent on the Company to revoke the termination and reinstate Ms. Allen. According to *Jamaica Flour Mills Limited v. Industrial Disputes Tribunal and National Workers Union*, reinstatement does not necessarily require that the employee be placed at the same desk or machine or be given the same work. The Tribunal also finds useful the case of **Spur Tree Spices Jamaica Limited vs. Minister of Labour and Social Security** where the Court found nothing wrong with the Company reinstating the former employees with all benefits and paid leave of absence pending the completion of disciplinary hearings.
59. The Labour Relations Code expressly recognizes the principles that *"work is a social right and obligation and not a commodity and that dignity must be accorded and that industrial relations should be carried out within the spirit and intent of the code.*
60. The Tribunal also finds it most appropriate to refer to the *Village Resorts Limited and the Industrial Disputes Tribunal and Uton Green representing the Grand Lido Negril Staff Association (1988 35 JLR 292)* where Justice Rattary P made reference to Smith C.J's quote in the *R. v. Minister of Labour and Employment, Industrial Disputes Tribunal, Devon Barrett et al ex-parte West Indies Yeast Co. Limited* from the learned author of *"The Impact of Unfair Dismissal"* at paragraph 11:  
*"A person's job can no longer be treated purely as a contractual right which the employers can terminate by giving the appropriate contractual notice."*
61. Ms. Catherine Allen was not afforded the dignity to which she had a right as the approach taken by the Company was not in keeping with good industrial relations practices.





62. The Tribunal finds that Ms. Allen was unjustifiably dismissed but has taken note of her egregious behaviour that contributed to her dismissal as well as the fact that she has mitigated her loss.

63. The Tribunal therefore awards accordingly.

**THE AWARD:**

64. The Tribunal in accordance with Section 12 (5) (c) awards that Ms. Catherine Allen be compensated in the amount of fifteen million dollars (\$15 million) for her unjustifiable dismissal.

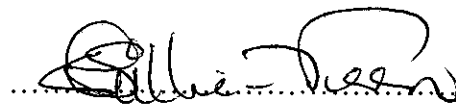
DATED THIS <sup>16</sup>28 DAY OF APRIL 2022.



Justice Marjorie Cole-Smith (Retd.)  
Chairman



Errol Beckford  
Member



Chelsie Shellie-Vernon  
Member

Witness:



Royette Creary (Miss)  
Secretary to the Division