

4 Ellesmere Road  
Kingston 4

IDT 7/2022- 8/2022- 9/2022

December 18, 2024

Mrs. Dione Jennings  
Permanent Secretary (acting)  
Ministry of Labour  
1F North Street  
Kingston

Dear Mrs. Jennings,

Re: Dispute between Hieroglyphics Limited and Val Lutas, Jonathan Rowe and Kamal Buddoo  
over the termination of their employment

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Enclosed please see copies of Awards and Minority Award handed down by the Industrial Disputes Tribunal in connection with the above disputes.

Yours faithfully,

  
Mario Ling  
For Secretary/Director

Similar letters sent to:

Hon. Minister of Labour	
Ms. Gillian Corrodus	- Director, Industrial Relations & Allied Services
Mr. Michael Kennedy	- Chief Director, Industrial Relations
Mr. Mikhail Jackson	- Attorney-at-Law
Mr. Jerome Santoni, PMP	- VP of Business Operation

Encl.

ML/tp

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 9/2022

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SETTLEMENT OF DISPUTE

BETWEEN

HIEROGLYPHICS LIMITED

AND

KAMAL BUDDOO

*AWARD*

I.D.T. DIVISION

MR. DONALD ROBERTS, CD., JP.	-	CHAIRMAN
MRS. JACQUELINE IRONS, JP.	-	MEMBER
DR. DENESE MORRISON, JP.	-	MEMBER

DECEMBER 18, 2024

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

HIEROGLYPHICS LIMITED  
(THE COMPANY)

AND

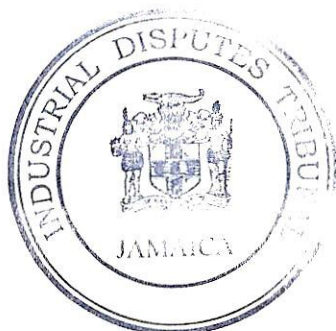
KAMAL BUDDOO  
(AGGRIEVED WORKER)

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REFERENCE

By letter dated January 7, 2022, 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 **Hieroglyphics Limited** and **Mr. Kamal Buddoo** with the following Terms of Reference: -

"To determine and settle the dispute between Hieroglyphics Limited on the one hand, and Kamal Buddoo 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 deal with the matter comprised:

Mr. Donald Roberts, CD, JP	-	Chairman
Mrs. Jacqueline Irons, JP	-	Member, Section 8(2)(c)(ii)
Dr. Denese Morrison, JP	-	Member, Section 8(2)(c)(iii)

## REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

Mr. Radcliffe Antoine	-	Managing Director
Mr. Jerome Santoni, PMP	-	Vice President of Business Operations, Posterity Group

The **Aggrieved** was represented by:

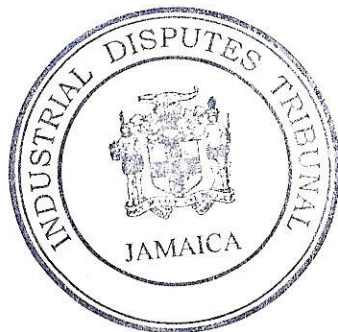
Mr. Mikhail C. Jackson	-	Attorney-at-Law
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In attendance:

Mr. Kamal Buddoo	-	Aggrieved Worker
Mr. Val Lutas		
Mr. Jonathan Rowe		

## SUBMISSIONS AND SITTINGS

Both parties submitted briefs to the Tribunal and made oral presentations over thirty-one (31) sittings covering the period April 26, 2022 through to July 31, 2024.



## BACKGROUND TO THE DISPUTE

1. Hieroglyphics Limited is a registered company located at 14 Ballater Avenue, Kingston 10 in the parish of St Andrew. The Company provides experienced, dedicated and skillful talent in areas of consultation, design, printing, print application, fabrication, installation, branding multi-media and much more.
2. Mr. Kamal Buddoo was employed to Hieroglyphics Limited on a full-time basis in the position of a Sales Executive with effect from September 23, 2019. His services were terminated on April 27, 2020.
3. Mr. Buddoo was present at the weekly general staff meeting on Monday, April 27, 2020, presided over by Mr. Antoine. At the meeting Mr. Antoine, who joined the meeting virtually, reported that there was evidence of an attempt to defraud the Company of sums of money through the use of a fraudulent email address. Upon outlining the alleged attempt at fraud, two persons entered the meeting and introduced themselves as Police Officers, and indicated that they would be questioning staff members. The staff was advised to leave the meeting with the exception of Mr. Buddoo and a few members of the management team.
4. Mr. Buddoo was questioned about the fraudulent email, which he denied knowing anything about. He was subsequently told that Mr. Rowe had implicated him in the fraudulent scheme along with other members of staff.
5. After the interrogation by the police, Mr. Buddoo was advised that his employment would be terminated immediately and was escorted off the premises by the officers.



6. A copy of a letter dated April 30, 2020, was sent to him, signed by Mr. Radcliffe Antoine the CEO, terminating his services with effect from April 27, 2020. On May 22, 2020, attorneys representing Mr. Buddoo contested the dismissal on the grounds that both the Labour Relations & Industrial Disputes Act and the Labour Relations Code were breached.
7. In the absence of a response from the Company, Mr. Buddoo's attorneys wrote to the Ministry of Labour and Social Security requesting conciliation assistance. After several meetings which failed to resolve the dispute, the matter was referred to the Industrial Disputes Tribunal for settlement.

#### THE COMPANY'S CASE

8. Mr. Antoine, in response to the Tribunal's enquiry about representation, advised that both himself and Mr. Santoni would be acting on behalf of the Company. In his opening submission, Mr. Antoine admitted that the Company did not follow Jamaica's labour law; he however said that the Company would provide evidence to show that Mr. Buddoo was implicated in a scheme to defraud the Company through a fictitious email address, was allegedly involved in a scheme to obtain an unearned commission in the amount of \$51,550.84, as well as demonstrate that he failed to adhere to the Company's Sales Policies and Procedures.
9. Mr. Radcliffe Antoine gave evidence on behalf of the Company. He acknowledged that as the President/CEO of Hieroglyphics he managed the Company remotely since he was based in the United States and ran a company, the Posterity Group LLC, which owned Hieroglyphics Limited. The Posterity Group provides medical personnel and healthcare professionals and medical supplies to the United States' Government.



Because of his absence, he installed video cameras in the offices at Hieroglyphics Limited.

10. Mr. Antoine indicated that his niece introduced him to Mr. Buddoo who in turn introduced him to Mr. Lutas. He said he spoke to Mr. Buddoo about the Company's policies, his expectations of him and the opportunity for future promotion. Mr. Antoine said he handed Mr. Buddoo the sales policy and procedures document, and although admitting that the letter of dismissal to Mr. Buddoo spoke of his failure to observe the sales policies and procedures, the specific breach of the policy and procedures was not identified.
11. He noted that there was a change in Mr. Buddoo's designation from 'Sales Manager' to 'Sales Supervisor', which he said was essentially a demotion because Mr. Buddoo did not display exemplary leadership as he was coming to work late, and was unable to motivate the sales team.
12. Mr. Antoine stated that during the Covid period he spoke with Mr. Buddoo about the likely impact the pandemic could have on operations and asked both Messrs Buddoo and Lutas to come up with a plan to deal with eventualities that may arise from Covid. The Company, he said, was put on a three-day work week with the exception of the sales team.
13. Mr. Antoine testified that he was aware of breaches to the Company's commission policy and observed that Mr. Buddoo did not follow the policy in respect of paying out commissions. He highlighted an incident in which he alleges that Mr. Buddoo instructed Miss Sacchoy Taylor, a Junior Sales Representative to submit claim for commission totalling \$51,550.845 he knew she did not earn.



14. He added that during the interrogation by the police at the meeting on April 27, 2020, Mr. Rowe implicated Mr. Buddoo in a scheme to defraud the Company of US\$25,000.00.
15. Mr. Ifeanyi Momah was called as a witness on behalf of the Company. He was employed as the Sales Manager in April 2020, and after a couple of weeks observed that the sales representatives were not performing any sales function. He said he called a meeting of the sales team but the meeting was aborted because Mr. Buddoo was disruptive and angry. He informed the Tribunal that meetings were called with the sales representatives, at least three times during the week of April 21, 2020, but Mr. Buddoo did not attend.
16. He admitted that he never provided Mr. Buddoo with the Company's handbook although he was given one and was told that members of staff would have received copies.

#### THE AGGRIEVED WORKER'S CASE

17. Counsel for the Aggrieved Worker said that the genesis of the matter is the fraudulent email address created to obtain funds via a third party without authorization. He said the case surrounding the fraud is not in dispute, neither is the meeting held on April 27, 2020, nor the termination of Mr. Buddoo on April 30.
18. The Aggrieved Worker was called upon to testify on his behalf. Mr. Buddoo said prior to joining Hieroglyphics he worked at National Outdoor Advertising first in accounts and later in sales. He said he began working at Hieroglyphics on September 29, 2019, and although his contract carried the titled Sales Executive, he was introduced as "*the new Sales Manager*". He said Mr. Antoine told him he had to assess his competence as a sales manager before determining his remuneration.



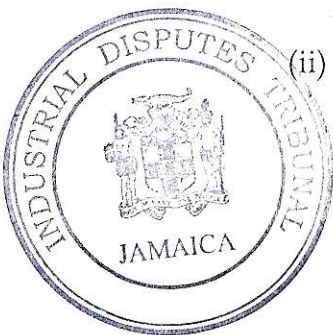
19. Mr. Buddoo averred that the operations of the company were not properly set out as jobs were leaving the compound *"with no indication as to whether the job was legitimate or not."* He stated no policy document was shared with him as the Company was still in its infancy. He said he introduced a system to be able to have jobs authorized by management.
20. In addition, Mr. Buddoo said he did not go through an orientation, however, during the first three months as Sales Manager he instituted training programmes, taught the staff how to price jobs and saw an increase in sales revenue in excess of J\$1 million during the period.
21. In January 2020, Mr. Buddoo said Mr. Antoine came to Jamaica and demoted him to Sales Supervisor, the post of Sales Supervisor was previously held by a Miss Lacey who was promoted to Sales Manager.
22. He stated that when he was first employed he reported to Mr. Antoine, but this was later shifted to Mr. Lutas when Lutas became General Manager. He said the job for which he was accused of approving commission payments for Miss Taylor was not in fact a commission, but was a mark-up on the job as stated in his December 2, 2019, email to Miss Winsome Griffiths.
23. Mr. Buddoo testified that on April 27, 2020, he was approached by a Police Officer who indicated that he wanted to speak with him. He was escorted to a meeting, which he was unaware of as he was locked out of his email from April 24. In the conference room there were staff members present along with Messrs Antoine and Omar Mullings who were on the online portal. Two Police Officers were also present at the meeting and identified themselves as member of the Anti-Terrorism Branch of the Constabulary.



24. In his testimony Mr. Buddoo said that Mr. Antoine outlined to the meeting an incident in which an attempt was made to defraud the company of US\$25,000, after which he (Mr. Buddoo) was asked to remain behind while other staff members were asked to leave the meeting. His cellphone was taken from him and he was accused of being a thief and told he was no longer employed to the Company. He said Mr. Antoine told the Police Officers to escort him along with Jonathan Rowe, Val Lutas, and Tajae Green off the premises. There was no letter of termination handed to him at that time.
25. Mr. Buddoo further gave evidence that the letter of termination was received on the Friday following the meeting of April 27 and the reasons for his termination were only known to him by way of that letter. He said he was not told beforehand of the charges, was not presented with any documentation regarding the alleged fraud, nor any of the other charges in the dismissal letter, and was not invited to a hearing and told of his right to be represented.
26. Mr. Buddoo told the Tribunal that he was not aware of any sales policy, and was never told of any breaches of the policy, was not involved in any attempt to defraud the company and was never charged for any offence in respect of the alleged fraud.

### ISSUES

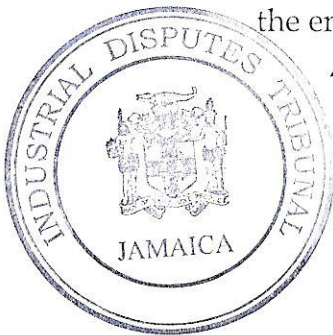
27. The issues which are germane to the findings of the Tribunal and upon which a full examination of all the circumstances of the case has to take place, are:
- (i) Whether the employer had reasonable grounds on which to form the belief that Mr. Kamal Buddoo had misconducted himself
  - (ii) Whether the employer, in terminating the services of Mr. Buddoo acted in accordance with the provisions of the Labour Relations Code (the Code) and the principles of natural justice?



- (iii) Where the Tribunal, based on the evidence, finds that the dismissal was 'unjustifiable', what considerations should be taken into account in arriving at an award.

**Whether the employer had reasonable grounds on which to form the belief that Mr. Kamal Buddoo had misconducted himself**

28. It is necessary in examining the issues to ensure that the relevant legal principles are applied to the facts of the case presented before the Tribunal. This is the required standard we are obligated to follow if we are to avoid falling into errors of illegality. While the onus is on the employer to show proof that the dismissal of Mr. Buddoo was on all counts fair, it has, however, to be consistent with the common law principles of fairness in the Jamaican jurisdiction.
29. It is important to emphasise that the matter of the lawfulness or unlawfulness of the employee's actions cannot properly come before us for adjudication; these are matters that fall within the jurisdiction of the superior courts of the land. We are to focus on the issue of fairness in the dismissal, and, in doing so, are circumscribed by statute and the common law.
30. In all cases the burden lies upon the employer to show that the dismissal was fair. According to Halsbury's Law of England, Fourth Edition, this means that the employer –



*"must show what was the reason(or, if there is more than one, the principal reason) for the dismissal; and he must also show that it was a reason which the law regards as acceptable; and that in the circumstances, having regard to equity and the substantial merits of the case, he acted reasonably in treating it as a sufficient reason for dismissing the employee." [Page 413].*

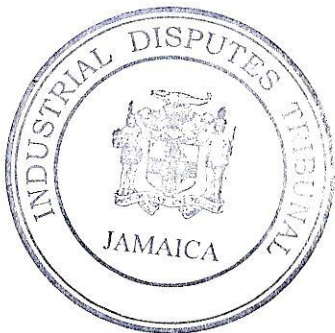
31. The letter of dismissal of Mr. Buddoo, signed by Mr. Antoine and dated April 30, 2020, sets out three (3) reasons for his termination. The first was that he was *"implicated in attempts to defraud the Company of US\$25,000.00"*; the

second reason had to do with his *"Suspected involvement with staff member to obtain an unearned commission totaling \$51,550.84"*; and the third was the *"Failure to adhere to Company's Sales Policies and Procedures."*

32. The parties were *ad idem* that an attempt at defrauding the Company was uncovered and that the domain of Mr. Jonathan Rowe was used to create the fictitious email address. There is further evidence that when confronted, Mr. Rowe implicated Mr. Buddoo along with other co-workers in the fraudulent scheme. Mr. Antoine accepted Mr. Rowe's assertion that Mr. Buddoo was a party to the fraudulent scheme as he claimed Mr. Rowe admitted to his involvement once he was confronted with the evidence. Mr. Antoine would therefore have reasonable grounds on which to pursue a case against Mr. Buddoo on the evidence of Mr. Rowe, despite the fact that Mr. Rowe said he conceded under duress.
33. However, there must be sufficient grounds to form the basis for a reasonable belief of misconduct, and a very important element in that regard was the need to conduct an investigation before coming to a conclusion. Both Messrs Mullings and Antoine admitted this was not done, the investigation had indeed commenced, but in Mr. Mullings' own words was still "ongoing" even at the time the charges were set out in Mr. Buddoo's letter of termination. Needless to say, while the standard of proof in cases of this nature is based on balance of probabilities and not criminal standard, the standard of proof must be responsive to the gravity of the facts at hand and the consequences of the ultimate decision.



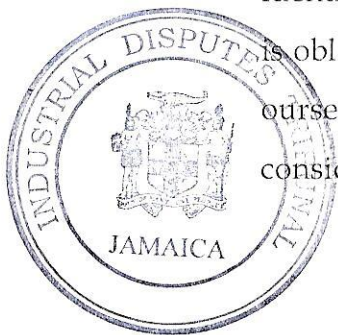
34. We believe reasonable grounds existed from which Mr. Antoine was entitled to form the view that Mr. Buddoo may have been guilty of misconduct. And while the Tribunal has no license to substitute its own views for that of the employer, the employer is obliged to provide sufficient evidence to affirm the arguments made out on its behalf if the standards of proof are to be met.
35. In conclusion, the Tribunal recognized that it was Mr. Rowe who implicated Mr. Buddoo in the fraud scheme. We therefore can take no issue with the belief formed by Mr. Antoine which led to his suspicion that Mr. Buddoo may have been guilty of an offence. However, in all circumstances the employee should be treated fairly, and the employer is burdened with the task of proving that a fair procedure was adopted before deciding on Mr. Buddoo's fate.
36. A second issue had to do with the attempt to pay out unearned commission which Mr. Buddoo had responsibility to oversee. There is no evidence that this was raised as a concern that could lead to disciplinary action before the letter of termination. In fact, there are email exchanges between Mr. Buddoo, Mr. Antoine, Mr. Lutas and Miss Griffiths that are quite telling. In a December 2, 2019, email to Miss Griffiths, and copied to Mr. Antoine, Mr. Buddoo spoke of *"an agreement with Andre Millwood regarding the current Lifespan Job..."*, and that there was a mark-up of 25%. Mr. Lutas sought clarification from Mr. Buddoo as to whether the *"25% of the deposit is 12.5% of the entire job"*, to which Mr. Buddoo confirmed, stating that the total commission would be \$186,500.00. Mr. Antoine was again copied on the email.
37. On the same day, December 2, Mr. Antoine requested *"the actual quote"*. This he obviously received for within hours of his email he replied thus:



*"I have reviewed the email string and original quote and feel that Kamala's explanation was clear, and I think we are all on the same sheet of music now. Going forward, any modification of the current policies should be discussed between relevant departments, then*

*communicated in writing. As we all learn how to communicate better interdepartmentally, it is imperative that we actively practice this early in the process..."*

38. The final email thread as evidence from Mr. Antoine was seeking clarification as to whether the commission was to be based on the after-tax amount paid to Mr. Millwood. It is clear on the evidence that was not a 'red flag' in December 2019, and exhibit 9, which appears to be the purchase order, dated November 29, 2019, offered no evidence or proof of an unauthorized commission payment. Without more, this Tribunal cannot conclude that there was a basis for Mr. Buddoo to be charged, much less to be dismissed for an offence seeking to approve unearned commission.
39. A third issue concerns the adherence to the Company's sales policy and procedures. We admitted into evidence the Company's sales policy which was said to be in effect from September 2019. [See exhibit 5]. Under 'Systems & Procedures', the sales team is to report to the Sales Manager, and a list of bullet-points follows which incorporates the role of the Sales Manager in ensuring that their team observes the procedures regarding clients. There is a section on 'Payment/Collection Policy', and Commission Structure & Incentive Policy. Mr. Buddoo said he was never given the policy, and when he enquired about it was told it was being worked on.
40. The question as to whether Mr. Buddoo received a copy of the Sales Policy becomes extraneous in light of the fact that Mr. Antoine never identified the specific breach or breaches of the policy before his dismissal or even in the letter of dismissal. Despite his compelling argument on this point, in the absence of identifying the specific breach committed by Mr. Buddoo beforehand, the Tribunal is obligated to invoke the *de minimis principle*, where we cannot deign to concern ourselves with a matter that does not meet the threshold required for consideration.



Whether the employer, in terminating the services of Mr. Buddoo, acted in accordance with the provisions of the Labour Relations Code and the principles of natural justice.

41. The Code is central to the principles of natural justice and fairness. Its purpose is to promote *"...effective co-operation between workers and employers and to protect workers and employers against unfair labour practices."*

42. The Code further states that it-

*"...Recognizes the dynamic nature of industrial relations and interprets it in its widest sense. It is not confined to procedural matters but includes in its scope human relations..."*

*Recognition is given to the fact that management in the exercise of its function needs to use its resources (material and human) efficiently. Recognition is also given to the fact that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it..."*

43. In order to achieve its purpose, the Code outlines what it considers to be the adopted disciplinary procedures that would achieve *"fair and effective arrangement"* for dealing with disciplinary matters. The written procedure should, as set out in Paragraph 22(i):

- "a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;*
- b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
- c) give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
- d) provide for a right of appeal, wherever practicable, to a level of management not previously involved;*
- e) be simple and rapid in operation."*



44. The Company admitted that the relevant provisions of Paragraph 22(i) of the Code were not observed; these are fatal flaws that the Tribunal simply cannot ignore. In fact, the very Act and Code was set up, as Sykes, J. (as he then was) in the **NCB v. Peter Jennings** case eloquently argued, to give the Tribunal the power to put -

*"...labour relations on a footing of respect for employees, respect for employers... in a post-colonial society bread [sic] on over three hundred years of human trafficking, economic exploitation, racial segregation, socio-economic oppression, violence, torture, sexual abuse, unequal power structure, the culture of master/slave, master/servant."*

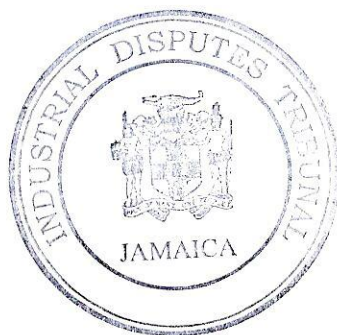
45. It is in this regard that one has to understand the Tribunal's emphasis on 'fairness', not to be "**conformable to law**", but to give primacy to notions of justice and equity. Sykes, J. in signalling the quintessential role of the Tribunal in the previously cited case, stated "*that there is no carve-out to the effect that certain kinds of conduct by employees are not subject to notions of justice, fairness and equity if the conduct of the employee is considered too egregious.*"

46. The Tribunal is bound to take a broad view of 'fairness' in dealing with 'equity and the substantial merits of the case.' The attitude of the common law is to regard a dismissal as 'unfair' if the worker was not given an opportunity to defend himself. This was borne out in the case of *R. v The Ministry of Labour, the Industrial Disputes Tribunal, et al ex Parte West Indies Yeast Company Limited* [(1985) 22 JLR 407], where Smith, CJ opined that -

*"It is not enough that the employer abides by the contract. If he terminates it, it is in breach of the Act, even if it is a lawful termination at common law, the dismissal will be unfair. So the Act questions the exercise of managerial prerogative in a far more fundamental way than the common law would do."*



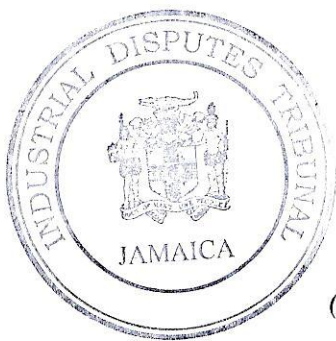
47. Mr. Antoine, in his opening submission, alluded to the Employment Law in California as the basis for his actions. It is known that within the State of California employment may be terminated 'at the will' of either party; this means that it can be done without cause or prior notice. In that jurisdiction 'cause' is defined as *"a fair and honest cause or reason, regulated by good faith on the part of the employer,"* and employers are not burdened to prove that they acted *"fairly"* and *"in good faith"*.
48. The United States, unlike Jamaica, has no developed consistent system of law protecting employees against unfair dismissal, except in cases of violation of federal, state and local discrimination or anti-retaliation laws. The general practice of At-Will Employment in the US where the employer can terminate the relationship at any time, for any lawful reason and without notice, sharply contrasts with the common law principle that a worker has a right not to be unfairly dismissed in the Commonwealth jurisdiction.
49. In a 2008 article on 'The Future of Labor and Employment Law in the United States', the author, Kathrine V. Stone, Professor of Law at the UCLA School of Law lamented *"the serious problem with the labor and employment law system in the United States..."* and how much *"the changing nature of work has rendered much of the [US] legal framework obsolete."* By contrast, we have seen the evolution of the common law across the Commonwealth (and particularly in Jamaica where the Tribunal's awards have been challenged) adapting itself, albeit slowly, to the new attitudes analogous with contemporary statutory rights.



50. In respect to the Act, where the 'unjustifiability' (or unfairness) of the dismissal is determined, the Tribunal is empowered to take one of the following courses of action as set out in Section 12(5)(c) of the Act.

*"If a 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 such much wages, if any, as the Tribunal may determine;*
- (ii) shall, if it finds 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) may in other case, if it considers the circumstances appropriate, order that unless the worker is reinstated by the employer within such period as the Tribunal may specify the employer shall, at the end of that period, pay the worker such compensation or grant him such other relief as the Tribunal may determine;*
- (iv) -----"*



64. On the evidence it is pellucid and beyond peradventure that Mr. Buddoo was not written to in respect of any of the acts of misconduct he allegedly committed prior to his dismissal; was not informed in writing of the charges; was not given an opportunity to defend himself against these charges, and to be accompanied by a representative; and was not informed of his right to appeal in his dismissal letter. It is therefore axiomatic that the dismissal of Mr. Buddoo can find no room for justification and, therefore, cannot stand.
65. Further, the Tribunal in examining all the circumstances surrounding the case, has to determine whether Mr. Antoine acted judicially in arriving at his decision. It appears not, for Mr. Antoine's involvement at the investigative stage in respect to the fraud, and being the person to terminate the services of

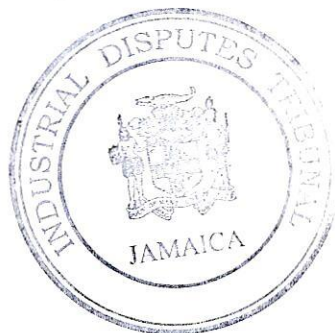
Mr. Buddoo raises the question of imputed bias. The natural justice principle, '*nemo judex in causa sua*', that is, 'no one should be a judge in his own cause', was flagrantly ignored. A second principle of natural justice, that is, Mr. Buddoo's right to be heard was denied, making the decision to terminate arrived at without the elementary rules of natural justice being complied with.

Where the Tribunal, based on the evidence, finds that the dismissal was 'unjustifiable', what considerations should be taken into account in arriving at an award?

66. The matter of unfair dismissal was addressed in the case of Edwards v. Chesterfield Royal Hospital NHS Foundation, where the learned judge opined that:

*"... a dismissal may be unfair because it is substantively unfair to dismiss the employee in the circumstances of the case and/or because the manner in which the dismissal was effected was unfair. The manner may be unfair because it was done in a humiliating manner or because the procedure adopted was unfair.... [and] defamatory findings were made which damage the employee's reputation and which, following a dismissal, make it difficult for the employee to find further employment..."*

67. The manner of dismissal, although may be considered lawfully correct, has also come in for some scrutiny by the Courts, including the Privy Council. In the seminal case of Jamaica Flour Mills vs. the NWU, their Lordships endorsed the Tribunal's view that the employer's dismissals, or more importantly, the manner of the dismissal of three of its workers were "unfair, unreasonable and unconscionable", and concluded that it showed "...very little of any concern for the dignity and human feelings of the workers..."



68. This could well be a consideration in Mr. Buddoo's case as the involvement of Police Officers in a manner we deemed intimidatory, and the denial of Mr. Buddoo's basic right to be heard in accordance with the Code, on all accounts, trampled upon his dignity. These are contentions too deeply rooted in our history to be ignored. To be clear, it is not about believing the truth of Mr. Buddoo's testimony as it is in believing in the validity of the employer's right to act fairly, justly and with dignity and respect.
69. The circumstances of this case bring to the fore considerations as to whether the dismissal could be seen as harsh and oppressive and contrary to principles and practices of good industrial relations. The Industrial Court in Trinidad and Tobago, in a 2013 ruling in the case Transport and Industrial Workers' Union and Public Transport Service Corporation argued that the dismissal of a worker was *"harsh and oppressive and not in accordance with the principles of natural justice and good industrial relations..."* because the Corporation had *"...not conducted a proper and fair inquiry and/or investigation of the matter..."*
70. Based on the facts of the case, where such a determination is made, the Tribunal can, in accordance with the Act, decide that the employer either *"pay the worker such compensation or grant him such other relief..."* that could include compensatory award for the manner of the dismissal.
71. The employer's action was manifestly unfair and in breach of every known provision of Section 22 of the Code. As much as they have conceded the wrongfulness of their action, it does not shield justice from public opprobrium.
72. In summary, the Tribunal is of the view that section 12(5)(c)(ii), in its proper construct, allows for the making of an award that does not violate the Wednesbury principle of reasonableness. Williams, J, in his judgement in the case of Garnett Francis v. IDT and Private Power Operators, [2012] JMSC Civil 55, noted that there exist -

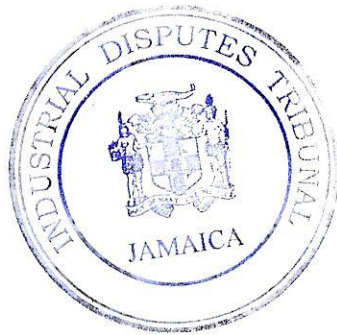


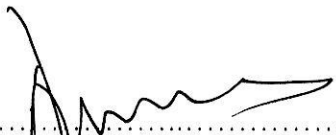
*"...a discretion entrusted to the Tribunal where the level of quantum of compensation is concerned; and it is a wide and extensive discretion... reveals no limit or restriction placed on the exercise of the discretion and no formula, scheme or other means of binding or guiding the Tribunal in its determination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

### AWARD

73. In taking into account all the factors surrounding the dismissal, the Tribunal rules that the dismissal of Mr. Kamal Buddoo by Hieroglyphics Limited, his employer, was unjustifiable. Consequently, consistent with section 12(5)(c)(ii) of the **Labour Relations and Industrial Disputes Act**, award Mr. Buddoo compensation in the amount of Three Million Dollars (\$3,000,000.00).
74. It is to be noted that the Member appointed under Section 8 (2)(c)(ii) is not in agreement with this Award and her opinion is appended hereto.


Dated this 18 December, 2024.



  
.....  
Mr. Donald Roberts, CD, JP  
Chairman

  
.....  
Dr. Denese Morrison, JP  
Member

Witness:

  
.....  
Mr. Mario Ling  
Secretary to the Panel

INDUSTRIAL DISPUTES TRIBUNAL

MINORITY AWARD

IN RESPECT OF

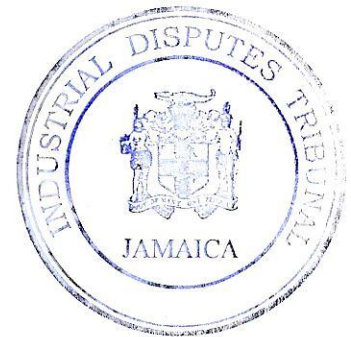
AN INDUSTRIAL DISPUTE

BETWEEN

HIEROGLYPHICS LIMITED  
(THE COMPANY)

AND

KAMAL BUDDOO  
(AGGRIEVED WORKER)



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REFERENCE

By letter dated January 7, 2022, 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 **Hieroglyphics Limited and Mr. Kamal Buddoo** with the following Terms of Reference: -

**"To determine and settle the dispute between Hieroglyphics Limited on the one hand, and Kamal Buddo on the other hand, over the termination of his employment".**

OPINION

I have read the Award of the Chairman and consenting Member very carefully and am in full agreement with the issues identified, the analyses in support of the issues, and the conclusion reached in respect of the unjustifiable dismissal of Mr. Kamal Buddoo.

The "Employment-At-Will" which the Employer relied on from the United States does not apply in Jamaica, as we are governed by the Act which incorporates the Labour Relations Code.

### AWARD

The majority Award, consistent with Section 12(5)(c)(ii) of the Labour Relations and Industrial Disputes Act, ordered the employer to compensate Mr. Buddoo in the amount of Three Million Dollars (\$3,000,000.00) for his unjustifiable dismissal.


Respectfully, I disagree with the quantum.

The reasons for the dissenting opinion are set out below, along with the amount I believe should constitute the Award:


1. Mr. Buddoo was employed for a period of eight (8) months as Sales Executive prior to his termination, the amount of his compensation should therefore not exceed six (6) months which includes payment for the manner of his dismissal
2. the full extent of his six (6) months' compensation should be mitigated since Mr. Buddoo had registered a new company in direct competition with Hieroglyphics two months after his termination.

When factored together, I have concluded that a reasonable compensation to be awarded to Mr. Buddoo should be in the amount of One Million Dollars (\$1,000,000.00).

Dated this 18 day of December 2024

  
Jacqueline Irons  
Member

Witness:

  
.....  
Mario Ling  
Secretary to the Division

