

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 31/2019

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SETTLEMENT OF DISPUTE

BETWEEN

ISLAND (JAMAICA) LIMITED

AND

MS. TAMEKA ELLIOTT



AND THE

***AWARD***

I.D.T. DIVISION

**HON. MRS. JUSTICE MARJORIE COLE-SMITH - CHAIRMAN**  
(Retd.)

**MRS. JACQUELINE IRONS, J.P. - MEMBER**

**MRS. CHELSIE SHELLIE-VERNON - MEMBER**

DECEMBER 21, 2020

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**IDT 31/2019**

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**ISLAND (JAMAICA) LIMITED  
(THE COMPANY)**

**AND**

**MS. TAMEKA ELLIOTT  
(THE DISMISSED WORKER)**



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**REFERENCE:**

By letter dated August 16, 2019 the Honourable Minister of Labour and Social Security in accordance with Section 11A(1)(a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

***“To determine and settle the dispute between Island (Jamaica) Limited on the one hand, and Ms. Tameka Elliott on the other hand, over the termination of her Contract of 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 (Retd.)	-	Chairman
Mrs. Jacqueline Irons, J.P.	-	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:

Mr. Matthew Royal	-	Attorney-at-Law
Mr. Gavin Goffe	-	Attorney-at-Law
Mrs. Judith Grant	-	Head of Human Resource

The **Dismissed Worker** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
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**In attendance**

Ms. Tameka Elliott	-	Dismissed worker
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**SUBMISSIONS AND SITTINGS:**

Briefs were submitted by both parties who made oral submissions during five (5) sittings held between October 28, 2019 and October 6, 2020.

**BACKGROUND TO THE DISPUTE:**

1. Island (Jamaica) Limited hereinafter referred to as the Company owns and operates several establishments within the tourism and hospitality industry.
2. Ms. Tameka Elliott was employed to the Company in the capacity of Group Human Resources Director on a fixed term contract of employment commencing June 12, 2015 for a period of three (3) years ending on July 12, 2018.



3. The contract of employment was terminated on September 6, 2016. Ms. Elliott engaged the services of Mr. Howard Duncan, Industrial Relations Consultant who protested her dismissal. She was given an appeal hearing which was unsuccessful.
4. The matter was referred to the Ministry of Labour and Social Security. No resolution was reached at that forum and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

**THE COMPANY'S CASE:**

5. The Company called one witness, Mrs. Judith Grant, Head of Human Resource in support of its case and whose evidence is that Ms. Elliott's employment predated hers. Mrs. Grant's evidence was based on information gleaned from Ms. Elliott's personal file.
6. The Company submitted that Ms. Tameka Elliott was given a three (3) year fixed term contract of employment in the position of Group Human Resources Director commencing June 12, 2015.
7. Ms. Elliott's duties included the general management of Human Resources and Industrial Relations issues and the development and implementation of policies and procedures including a disciplinary policy to ensure that the Company's Industrial Relations Practices meet the Natural Justice standard required by the Labour Relations Code and are reflective of Industrial Relations best practices.
8. At the time of her employment, the Company did not have a written disciplinary code or established procedures for dealing with Industrial Relations issues. The development of these policies and procedures were clear and urgent objectives of the company in employing Ms. Elliott as its Human Resources Director.
9. On or about September 2016, the Company decided to do a re-evaluation of the Human Resources Department. Considering the changes it intended to make to the department and the role of the head of department, the Company formed the view that another candidate would be more suitable for the position as re-envisioned.



10. The Company arranged a meeting with Ms. Elliott to discuss this development and to consult her in respect of the termination of her contract. This meeting was held on or about September 5, 2016. Ms. Elliott was given an opportunity to ask questions and receive responses from the Company.
11. Following this meeting, the Company proceeded to terminate Ms. Elliott's employment effective September 6, 2016. Ms. Elliott was also paid two month's pay in lieu of notice and for the days she worked since her last payday to the date of termination.
12. The Company then received a letter from Mr. Howard Duncan indicating that Ms. Elliott wishes to exercise her right of appeal. An appeal meeting was held on October 11, 2016, chaired by the Company's Chief Executive Officer, Mr. Christopher Blackwell.
13. The issue of the procedure adopted in terminating Ms. Elliott's services was raised by her at this meeting. The Company was surprised to learn that Ms. Elliott was contending that a termination, effected in reliance on the termination clause in the employment contract which allows for termination by either party with notice, was inadequate, considering that Ms. Elliott relied on the same procedure and contractual terms in dismissing several other employees during her tenure as Human Resources Director.
14. The Company was not aware of the due process guidelines outlined in the Labour Relations Code. Ms. Elliott had not set the necessary procedures in place to ensure the Company's compliance with the Code in terminating contracts of employment with its employees. The Policies, which should have been developed and implemented by Ms. Elliott, would have been critical in a case such as this one, where there is no clear guidance in the Labour Relations Code for an employer to satisfy Natural Justice Principles in terminating an employee for non-disciplinary reasons.
15. The Company was of the view that the consultation meeting held with her prior to the termination and the appeal meeting with Mr. Blackwell were procedurally adequate.
16. At the time of Ms. Elliott's termination, she was earning a gross salary, inclusive of allowances of 56,000.00 USD per annum as well as the Company reserving the right to issue an additional 2,000.00 USD per annum discretionary bonus.



17. On November 25, 2016, Ms. Elliott secured employment with KMS Jamaica Limited at the Azul Sensatori Jamaica in the role of Human Capital Manager where she received a salary in excess of 60,000 USD per annum. The effective date of Ms. Elliott's employment with KMS Jamaica Limited was December 1, 2016.
18. It is the Company's submission that Ms. Elliott was a senior member of staff with extensive Industrial Relations expertise. She was in a much different position from a lower ranked member of staff with limited knowledge of Industrial Relations and due process rights. Her knowledge of the applicable rights and procedures is greater than any other officer within the Company.
19. The Company submitted that the Tribunal is entitled to consider the greater knowledge, skill, and expertise possessed by Ms. Elliott and assessment of the appropriate due process standards to which the Company is to be held in this specific case. Therefore, it is submitted that it was adequate for the Company to meet with Ms. Elliott and discuss their vision for her role and facilitate an appeal hearing upon her request.
20. It is their submission that Ms. Elliott being the party seized with greater Industrial Relations knowledge and expertise, it was incumbent on her to, at least, raise an early objection to the process being adopted by the Company and alert them to potential violations of her rights and give the Company an opportunity to correct its procedure. This point was only raised after her termination.
21. It is Mrs. Grant's evidence that Ms. Elliott's termination was effected in keeping with the termination clause developed by her (Ms. Elliott) which was previously used by her to effect termination of other employees. The Company contended that it would be unjust for Ms. Elliott to have provided bad advice to the Company and then seek to rely on that fault as the basis for her receiving compensation.
22. It is the Company's submission that should the Tribunal find that the Company's termination of Ms. Elliott is unjustifiable, the loss faced by Ms. Elliott, if any, has been mitigated by her securing alternative employment proximate to her termination. Considering that the Company paid Ms. Elliott two months' pay in Lieu of Notice and that



she commenced her employment with KMS Jamaica Limited in December 2016. Ms. Elliott spent one month without pay.

**THE DISMISSED WORKER'S CASE:**

23. The Dismissed Worker, Ms. Tameka Elliot was the only witness called in support of her case.
24. Ms. Elliott was employed on June 12, 2015 in the capacity of Group Human Resources Director on a three (3) year contract to oversee the operations of the Company's eight affiliate companies in different parts of the island. She was mandated to develop, write, manage and review human resource policies and procedures for all staff as well as to make recommendations for policy changes in keeping with laws and market conditions. She was also charged with the responsibility to ensure all locations are in possession of a policy document. In addition, she was also commissioned to advise and direct Senior Management on employment, discipline, termination and to ensure that the Company complied with the Jamaica Labour Laws (and Regulations) because what existed before was to terminate at will.
25. It is Ms. Elliott's evidence that in her effort to guide the process and to ensure that due process was followed as is established by law, she met upon some resistance which she said was the reason she is in the position she is today. She held several disciplinary hearings in accordance with the guidelines set out in the Labour Relations Code and she recalled coming under fire and scrutiny for the decision that she made at the end not to terminate the employees' services as that would be in contravention of what the normal practice would be. So having followed due process where management may believe that a team member should be terminated, she would review the files to see that the infraction matched the punishment and that is what she would apply.
26. On one occasion, she was told that it was better for her to do as Mr. Blackwell pleases which was to terminate the employee if that is what he wants than to actually reduce the penalty which is in accordance with due process.

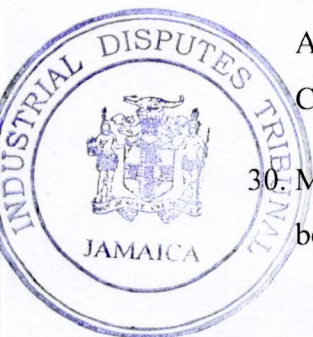


27. In relation to developing, writing, managing and reviewing Human Resource policies, it's Ms. Elliott's evidence that she did not get the opportunity to document standard operating procedures to guide the process. She said that Mr. Blackwell met with her on one occasion and told her he wanted to be able to terminate at will. She explained to him that there were procedures outlined in law that must be followed if not the Company would be liable even if the person is guilty. She was then told that Ms. Debbie-Ann Gordon, Attorney-at-Law knew of ways to terminate "at will" and with that Mr. Blackwell said he would have her meet with her (Ms. Elliott). She met and spoke with Ms. Gordon who promised to provide a checklist to terminate "at will" but she never received it.

28. Ms. Elliott testified that during the same period, she received a letter from Ministry of Labour & Social Security about an outstanding matter regarding a dispute at Pantrepant Farms Property in Trelawny, a matter which predated her employment by 3-4 years. On reviewing the file, she discovered procedural breaches resulting in a breach of Natural Justice. Recognizing the breach, she thought it best to settle the issue. She spoke to Messers. Bowleg, General Manager and Sean Anthony, Chief Financial Officer and made a recommendation to resolve the matter and she reached out to Ms. Debbie-Ann Gordon and got no response. Consequently, she recommended that Mr. Kwame Gordon, Attorney-at-Law be brought in to assist in settling the matter in the quickest time possible. She received the go ahead from Mr. Bowleg and Mr. Gordon was contacted and he made his recommendation based on the information she presented to him. The recommendation he made to try to settle the matter was aligned with hers.

29. Payment was prepared and Messers. Blackwell, Bowleg, Anthony and Crawford were advised of the recommendation. She stated that she outlined exactly the breaches that were committed and everything as the law dictates. Mr. Blackwell was unhappy with the recommendation and said, "*we should fight it, give one month and put him back to work, not on the payroll*". This was unacceptable but further negotiations yielded a settlement. As a result of the settlement she was accused by Mr. Sean Anthony of committing the Company financially.

30. Ms. Elliott's evidence is that although she did not develop and write the policies, it was being done in practice by her but never had an opportunity to document it. The reason she



did not complete the policy with the Company was because Ms. Debbie-Ann Gordon did not supply the necessary material.

31. Ms. Elliott, in examination in chief, testified that on September 5, 2016 about 6:30 p.m., after work ended and she was doing some extra hours to catch up on some matters that she was dealing with, she was called by Mr. Bowleg to his office. She said that she didn't think anything of it as it was normal for them to be at work those hours as they always have impromptu meetings. Present at the meeting were Mr. Bowleg, Mr. Sean Anthony and herself (Elliott). At the meeting which lasted approximately fifteen (15) minutes, Mr. Sean Anthony told her that her services were no longer needed as they were going to decentralize the role of HR and would no longer need the Group HR Director's position. He said that each property would now have its own HR and she was not offered any of those positions. During Ms. Elliott's tenure each property had HR Assistants and she was the person that they would liaise with and based on the nature of the situation she would visit the property to conduct hearings, meetings, staff meetings etc.
32. She said that Mr. Anthony's utterances at the meeting were that Mr. Blackwell wanted to get rid of her position as Group HR Director and whatever "*Chris wants Chris gets*". Having heard the utterances, she felt there was no room to ask questions as this was coming from the owner himself. There was no consultation prior to the meeting and she was surprised at the termination. The Company's laptop was taken from her and she was asked to return the next day to hand over all other company documents. On September 5, 2016, she received a letter dated September 6, 2016 terminating her contract of employment.
33. She contended that her termination was unjustifiable as there was no communication or consultation prior to her termination. She further contended that the Company breached the principles of Natural Justice and the Labour Relations Code and that she wished to be re-instated as the scope of her job was to build her career. Ms. Elliott said that re-instatement or compensation was always on the table for the duration of the contract.



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

34. The Tribunal gave careful consideration to the submissions made by both parties and asked itself whether the Company was justified in the termination of the employment of Ms. Tameka Elliott.
35. The Tribunal acknowledges that the Company has a right to reorganize and restructure its operations as it considers fit. It has a right to manage the business of the Company in the most efficient way possible.
36. The unchallenged evidence of Miss Tameka Elliott was that she was advised of her termination on September 5, 2016 approximately 6:30 pm. when she was summoned by Mr. Bowleg, the General Manager to his office. The Tribunal notes that the decision to terminate was well after normal working hours.
37. The Tribunal is mandated to take into consideration Section 3 (4) of the Labour Relations & Industrial Disputes Act (LRIDA) 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 proceeding; 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 a Board in determining the question”*

“Shall” being the operative word.

38. The Labour Relations Code expressly recognizes the principles that *“management in the exercise of its functions needs to use its resources (materials and humans) efficiently.”* It also recognizes that *“work is a social right and obligation and not a commodity and that dignity must be accorded to those who perform it ensuring continuity of employment, security of earnings and job satisfaction and that industrial relations should be carried out within the spirit and intent of the Code.”*



39. The Tribunal is of the view that the way in which Ms. Elliott's contract of employment was terminated was unreasonable and showed very little if any concern for the dignity and human feeling of her as a worker.

40. Clause 19(B) of Labour Relations Code addresses the importance of consultation. It states that:

*"Consultation is the joint examination and discussion of problems and matters affecting management and workers. It involves seeking mutually acceptable solutions through a genuine exchange of views and information. Management should take the initiative in establishing and regularising consultative arrangements appropriate to the circumstances of the undertaking in co-operation with the workers or their representatives"*



41. Ms. Elliott who holds a prominent position as Group Human Resources Director was not consulted as it relates to decentralizing the role of HR as the Group HR Director's position was no longer needed.

42. The fact that Clause V(A) of Ms. Elliott's contract of employment states that prior to its expiration date either party may terminate the contract by giving two (2) month's advanced notice in writing or payment in lieu of notice does not mean that a person's job should be treated as an article of trade.

43. The Tribunal finds it most important to refer to Clause V(B) of Ms. Elliott's contract of employment which states that *"Employer may terminate this Agreement without advanced notice or payment in lieu of notice for cause or any breach or breakdown in performance requiring immediate dismissal or if Employee shall be found guilty of any material disobedience or breach of any stipulation contained in this agreement or gross misconduct, likely in the opinion of Employer, to injure the Employer, its affiliates, subsidiaries or the customers or imperil or prejudice the reputation or operation of the same. In addition, Employer may terminate this Agreement immediately if Employee becomes bankrupt, is or has been convicted of any indictable offence; is persistently and wilfully neglectful or becomes incapable of efficiently performing the duties of Employee's office; does not perform*

*duties at satisfactory levels; refuses to carry out or observe reasonable instructions, directions or restrictions of Employee's supervisor, the Management of the Directorship of Employer; is found guilty of any serious misconduct or any serious persistent breach or non-observance of the provisions of this Agreement; or Employee fails or refuses to take an Employer administered polygraph exam."*

44. No breach was found to have been committed by Ms. Elliott as she was not dismissed for cause and there were no allegations of misconduct, poor performance or any of the items stated above as reasons that could have led to the termination of her contract of employment.
45. The Company in its submission states that they were not aware of the due process guidelines outlined in the Labour Relations Code, and that Ms. Elliott should have guided them through the process of her termination. The Tribunal finds that Ms. Elliott had no obligation to inform them how to terminate her contract of employment.
46. The Tribunal took into consideration the fact that Ms. Elliott found employment shortly after her termination. She has asked for reinstatement but the fact that Ms. Elliot was employed on a fixed term contract which would have expired on July 12, 2018, the Tribunal is not vested with the power to extend this fixed term contract beyond the expiry date stated in the Agreement. The Tribunal does not therefore order reinstatement.



**AWARD:**

47. In accordance with the provisions of Section 12(5) (c) (ii) of the Labour Relations and Industrial Disputes Act, the Tribunal finds that the termination of Ms. Tameka Elliott's employment was unjustifiable, and awards that Ms. Tameka Elliot is to be paid twelve months salary inclusive of travelling and housing allowance for the said period.

DATED THIS <sup>st</sup> 21 DAY OF DECEMBER 2020



Justice Marjorie Cole-Smith (Retd.)  
Chairman

Jacqueline Irons, J.P.  
Member

Chelsie Shellie-Vernon  
Member

Witness:

Royette Creary (Miss)  
Secretary to the Division