

INDUSTRIAL DISPUTES TRIBUNAL
Dispute No: IDT 56/2024

SETTLEMENT OF DISPUTE
BETWEEN

JAMAICA CIVIL AVIATION AUTHORITY

AND

**JAMAICA AIR TRAFFIC
CONTROLLERS ASSOCIATION**

AWARD

I.D.T. DIVISION

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

AUGUST 26, 2025

INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
JAMAICA CIVIL AVIATION AUTHORITY
(THE AUTHORITY)
AND
JAMAICA AIR TRAFFIC CONTROLLERS ASSOCIATION
(THE ASSOCIATION)

REFERENCE

By letter dated October 11, 2024, the Hon. Minister of Labour and Social Security, pursuant to Section 9(3)(a) of the Labour Relations and Industrial Disputes Act, 1975 (the "LRIDA" or the "Act") referred to the Industrial Disputes Tribunal ("the Tribunal") for settlement, the dispute between **Jamaica Civil Aviation Authority ("JCAA")** and **Jamaica Air Traffic Controllers Association ("JATCA")** with the following Terms of Reference: -

"To determine and settle the dispute between Jamaica Civil Aviation Authority on the one hand, and Jamaica Air Traffic Controllers Association on the other hand, over the Association's claim that the *Heads of Agreement* between the parties, as executed on January 2, 2024, was breached by the management."



DIVISION

The division of the Tribunal selected in accordance with Section 8(2)(c) of the Act to hear the dispute comprised:

Mr. Donald Roberts, C.D., J.P.	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2)(c)(ii)
Dr. Denese Morrison, J.P.	-	Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF THE PARTIES

The **Authority** was represented by:

Mr. Emile Leiba	-	Attorney-at-law
Ms. Kimberly Hanniford	-	Attorney-at-law
Mr. Richardo Maddan	-	Legal Officer
Mrs. Nichole Morgan	-	Deputy Director General

The **Association** was represented by:

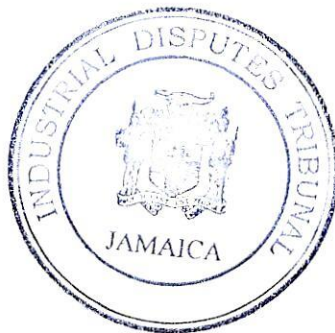
Mr. Kurt O. Solomon	-	President
Mr. Milton J. Walker	-	Delegate

In attendance:

Several members of JATCA were in attendance.

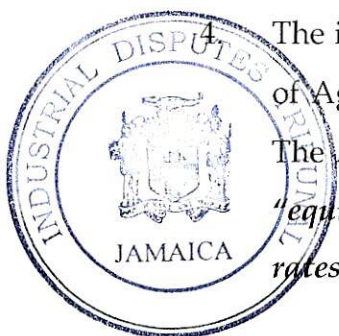
SUBMISSIONS AND SITTINGS

The parties submitted briefs to the Tribunal and made oral presentations over ten (10) sittings during the period December 2, 2024 to July 8, 2025. Over the course of the sittings the Tribunal reviewed three (3) exhibits along with testimonies by way of oral evidence.



BACKGROUND TO THE DISPUTE

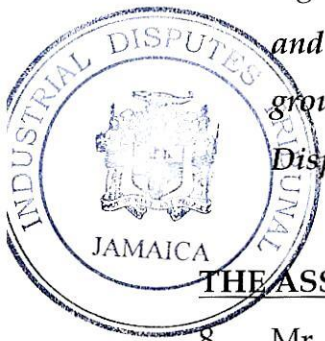
1. The JCAA is a body corporate established under the Civil Aviation Act to regulate Jamaica's civil aviation industry and to provide air navigation services including air traffic services. The JATCA is a registered trade union with sole bargaining rights for air traffic controllers and other categories of staff employed to JCAA.
2. The Minister's referral of the dispute to the Tribunal on October 11, 2024, was made pursuant to section 9(3)(a) of the Act where disputes exist in an undertaken providing essential services; and in the case of the dispute between the JCAA and JATCA, there was "*a distinct and real possibility of industrial action*".
3. The Tribunal held an emergency meeting on October 11, 2024, and an **Order to Refrain from Industrial Action** was issued on the same day, consequent on which the parties agreed to future dates for the hearing of the dispute.



4. The industrial dispute surrounds the interpretation of certain clauses in the Heads of Agreement (HOA) signed on January 2, 2024, between the JCAA and JATCA. The Agreement stipulated as one of its primary purposes, the need to ensure that "*equity is established as far as practicable with the implementation of market rates of basic pay afforded to members of the JATCA and relative to the JCAA.*"
5. The provision of the Agreement which is the subject of the dispute relates to clause 5.9, which resolves that a 'one-off payment' should be made "*only to current JATCA members*", and would be subject to recalculation "*if the original parameters on which they were predicated, become disturbed.*" The Agreement further states, under the heading '**amendment**', that any modifications or amendments to the document should be in writing and ratified by the parties.
6. Subsequent to the signing of the Agreement, the JCAA made the one-off payment to non-dues paying members of JATCA falling within the bargaining unit. The JATCA contends that the Agreement was breached as there was no consultation

with the union *"in keeping with the guidance from the Labour Relations Code (LRC) and the Labour Relations and Industrial Disputes Act (LRIDA) where it becomes necessary to resolve any manner pursuant to this agreement"*; that it was prejudicial to other non-members of the bargaining unit and sought relief from the Tribunal to restore the original provision set out in clause 5.9 of the Agreement by reversing the payments made to the non-dues paying members of JATCA.

7. The JCAA asserts that there was no breach to the January 2, 2024, Heads of Agreement and the management *"followed all provisions stipulated in the HOA and made the one-off payments to the appropriate members of the bargaining group... in accordance with the provisions of the Labour Relations and Industrial Disputes Act ("LRIDA")."*

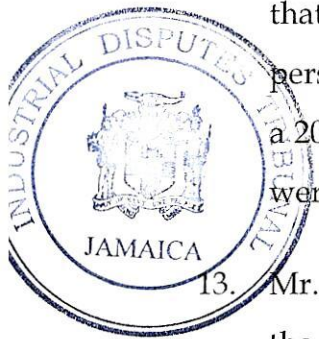


THE ASSOCIATION'S CASE

8. Mr. Sean Blair, Vice President of JATCA was the first witness. He has been employed to the JCAA since 2008 and currently serves as a Rated Approach Radar Controller at the Norman Manley International Airport (NMIA) and the Donald Sangster International Airport in Montego Bay. He became a member of the Union's executive in 2010.
9. Mr. Blair said that as Vice President of JATCA he has been responsible, since 2012, for *"the calculation and computation of salaries"* as well as providing comparable data analysis in respect of salaries and other conditions of work in the global marketplace.
10. In his testimony, Mr. Blair said that JATCA represents three bargaining units, namely, the Air Traffic Controllers (ATCs) group; the Aeronautical Information Management personnel (AIM); and the Aerotel Technicians. Other groups represented by JATCA and identified by Mr. Blair in the HOA include Flight Information Officers (FIO), Flight Data Processors (FDP), ANS Safety and Quality

Officers and Technical Assistants. In addition, Mr. Blair said, Aerotel Technicians also form part of the bargaining unit but are employed to Aeronautical Telecommunications Limited, which is a subsidiary of the JCAA.

11. Mr. Blair stated that three (3) other unions and/or staff associations represent other categories of workers employed by the JCAA, however, there is no joint bargaining as JATCA negotiates solely for its members.
12. Mr. Blair advised that since 2009 JATCA had been petitioning the Ministry of Finance to have ATC personnel paid at international market rate. He contended that a 2015 study done by PricewaterhouseCoopers (PwC) showed that ATC personnel in Jamaica were being paid at 80 percent of global market rate, and that a 2016 PwC report further revealed that other personnel outside of the ATC group were receiving above market rates.
13. Mr. Blair said that clause 5.9 of the HOA reflected the compromise reached during the negotiations as they were advised by the Transformation Implementation Unit (TIU) of the Ministry of Finance that the implementation of the full market rate would have "a ballooning effect" and proposed instead a one-off payment. A weighted average was agreed on between JATCA and the TIU for determining the one-off payment.
14. Mr. Blair asserted that the letter from Mr. Kurt Solomon, JATCA's President to the Hon. Nigel Clarke, Minister of Finance & the Public Service, dated November 28, 2023, is consistent with the provisions of clause 5.9 of the Agreement, which stated that the one-off payment should only be made to 'current JATCA members.'
15. He said that although clause 5.9.3. of the Agreement stated that the one-off payment should be made to the 'list of JATCA members' set out in appendix 1, it should not be taken to mean Flight Data Processors as they were specifically identified as the group to which the payment should not be made.



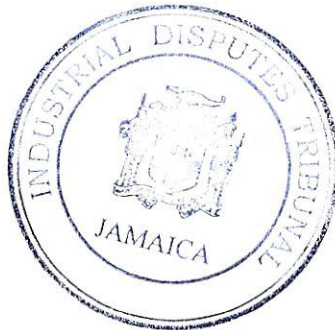
16. Under cross examination, Mr. Blair admitted that the JCAA can make payments to persons outside of the bargaining unit; he, however, maintained that the gravamen of the dispute has to do with one-off payments made to employees who fall within the bargaining unit, but are not JATCA members. He reiterated that the HOA clearly stipulated that the one-off payment was solely for JATCA members, and any payment outside of that group would be in breach of the Agreement.
17. JATCA's second witness was Mr. Odayne Steele, currently an Approach Radar Controller and has been with the JCAA for thirteen (13) years. He currently serves as the General Secretary of JATCA and was present throughout the negotiations leading up to the signed Agreement. He understood that *"the one-off payment was a specific payment to benefit members of JATCA and not members of the bargaining unit."* Mr. Steele said the one-off payment was paid to some non-members of JATCA and that there were members of JATCA who were not in receipt of the payment.
18. Mr. Steele said after the signing of the HOA, it came to his attention that payments were being made to non-dues paying members of JATCA, which he said represented a breach of clause 5.9 of the Agreement, as well as clause 40 where there was no prior discussion regarding any intended change or modification. He said JATCA wrote to the JCAA outlining the breach which led to a series of meetings. He informed the Tribunal that the management advised of receiving requests from non-members of JATCA and after consultation with the Ministry of Finance decided to make the payments.
19. Mr. Steele averred that the one-off payment was *"a compromise to members of JATCA. It was a compromise to actual salary rates"* arrived at through negotiations with the Ministry of Finance and the Public Service.



20. Mr. Steele admitted that he has no 'direct knowledge' or names of the persons who received the payment triggering the dispute. He also admitted that the one-off payment was a compromise to the wage demands made by JATCA, and that the salary increase would have been applicable to all members of the bargaining unit. He acknowledged that the HOA covered all members of the bargaining unit irrespective of whether they are dues-paying members of JATCA. Nevertheless, he was insistent that clause 5.9 created a benefit for the current JATCA members at the exclusion of non-dues paying members and pointed specifically to clause 5.9.1. where the parties explicitly agreed that the payment is only applicable to current JATCA members. He pointed further to clause 5.9.3. of the Agreement where the parties expressly omitted the payment to be made to the Flight Data Processors.
21. JATCA's third witness was Mr. Maurice Smith, an employee at JCAA for seventeen (17) years. He has been a member of JATCA's executive for fourteen (14) years and currently serves as the Treasurer. Mr. Smith acknowledged that in his years on the executive, he is not aware of any previous Agreements between the parties which excluded negotiated benefits to persons within the bargaining units who are non-dues paying members of JATCA.

THE AUTHORITY'S CASE

22. Counsel for JCAA said there is the need to identify the specific breach(es) being claimed and to determine whether those breaches are enforceable. He said the management made full payments on all sums due under the Agreement, and the Agreement, by its nature, cannot have the effect of prejudicing other employees of the Authority. Where the claim is made that a breach occurred the burden of proof, he said, rests with JATCA.



23. The JCAA's sole witness was Mr. Howard Greaves, the Deputy Director General, Air Navigation Services. He was a member of JATCA from 1992 to 2012 and served in the capacities as General Secretary, Vice President and President. He said that during his time the outcomes of the negotiations would benefit all members of the bargaining unit. He said he is not aware of JATCA having to approve benefits paid to other staff members, and as far as he is aware the Authority does not have the powers to go outside the guidelines set by the Ministry of Finance and the Public Service. Mr. Greaves said he attended two (2) meetings relating to the current HOA and the discussions were around items in the collective labour agreement, but nothing about one-off payment.

ISSUES

24. The Tribunal discerns the critical issues for consideration as follows:
- a. The applicability of the Statute and Regulations governing the rights of workers in respect of trade union membership; the determination of bargaining rights and the establishment of bargaining units; and the collective bargaining process in determining the case;
 - b. Consequent on the signing of the Heads of Agreement between JCAA and JATCA on January 2, 2024, whether:
 - (i) In relation to the requirements of the Labour Relations Code governing good industrial relations praxis, certain provisions of the Agreement were breached by the JCAA,
 - (ii) If so determined, what remedies, if any, are available to the Tribunal



ANALYSIS

The applicability of the Statute and Regulations governing the rights of workers in respect of trade union membership; the determination of bargaining rights and the establishment of bargaining units; and the collective bargaining process in determining the case.

25. The law governing labour relations is set out in Part II of the LRIDA. Section 4(1)(a) provides for the right of every worker *"to be a member of such trade union as he may choose"*, or the right *"not to be a member."* The right to union membership does not, *ipso facto* translate into a right to collective bargaining. As Dr. Noel Cowell, in his book on *'A Summary of Test Cases in Jamaican Labour Law'* argued, the Court in the *Banton's case*¹ had pronounced that *"... Freedom of Association means that people are free to associate and nothing more. It does not mean the purpose for which they associate (in this case collective bargaining) and the objects which, in association they pursue, are guaranteed and made sacrosanct under the Constitution."*
26. The determination of bargaining rights is a separate act set out in Section 5(1)(a) of the Act where the Minister may cause a ballot to be taken to determine *"... whether the workers, or a particular category of the workers, in the employment of an employer wish any, and if so which, trade union to have bargaining rights in relation to them..."*
27. The right to collective bargaining is therefore guaranteed through a ballot, where, as Section 5(5) of the Act stipulates:



"If the result of the ballot shows that the majority of the workers who were eligible to vote indicated that they wish a particular trade union to have bargaining rights in relation to them, their employer shall... recognize that trade union as having bargaining rights in relation to the workers who were eligible to vote and in relation to any bargaining unit in which they may, for the time being, be included." [Tribunal's emphasis]

¹ See *Fabian Banton and Others v. Alcoa Minerals of Jamaica and 20 others* [1971] 17 WIR 207

28. In fact, 'bargaining rights' as defined by the Act means -

"rights to participate, on behalf of the workers in relation to whom the expression is used, in negotiations in respect of -

(a) the terms and conditions of employment of those workers, or the physical conditions in which they are required to work;

(b) -----

(c) ----- "

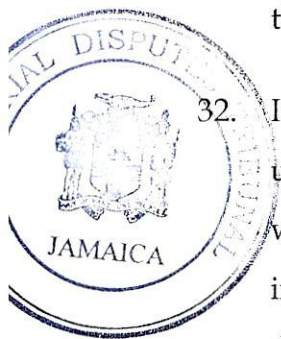
29. There is the limited use of what is called 'union security arrangements', that is the use of 'closed shop' or 'agency shop' arrangements' where employment is a condition of union membership in the former, or, in the case of the latter, where members of a bargaining unit are obligated to pay the equivalent of union dues in lieu of membership to other specified causes. We are not aware of any Caribbean country's common law system explicitly supporting 'closed shop' arrangements. However, there are specific cases in Trinidad & Tobago, Bermuda and Grenada where the laws make provisions for agency shop arrangements, according to Samuel J. Goolsarran (ed.) in **Caribbean Labour Relations Systems: An Overview, Second (revised) edition, ILO, 2005**. There is, of course, no express provision in Jamaica for such an arrangement, although one could reasonably argue that since our collective bargaining remains largely within the framework of voluntarism, in the absence of specific legislation, the union and the management could conceivably negotiate some form of agency shop arrangements.

30. That, notwithstanding, it is our considered view that neither the Act nor its Regulations recognize the members of the union beyond their right to freedom of association. As Cowell argued in the previously cited work -

"...while the right to join a trade union has value in itself, it makes even more sense, when the members can be represented by the union in the bargaining process. This after all is the object of the association. Furthermore, joining union makes little sense if the employer has no reciprocal obligation to recognize the union and if the worker has no corollary right to participate in the activities of the union."



31. The Act and its Regulations expressly speaks to members of a bargaining unit defined by among other things, 'the community of interest', and the right to collective bargaining guaranteed on the basis of the majority of those workers who form part of that 'community of interest' and not union members. Even then, in the practice of industrial relations in Jamaica spanning nearly eight decades, and in particularly the last 50 years with the introduction of the Labour Relations and Industrial Disputes Act and Regulations, the terms of the agreement from the collective bargaining process applied to all members of the bargaining unit. The JATCA witnesses admitted that has been the case over the years, and it would seem to us that, even on another level, a regulatory framework for the administration of collective labour agreements at the JCAA has been established through custom and practice and should not be lightly disturbed.



32. It would not seem to be fair, in our view, where the statutory provision for the union's right to collective bargaining is predicated on the categories of workers with a 'community of interest', and the majority of those eligible to vote (which includes dues paying and non-dues paying members of staff) that the benefits derived from that process be limited only to members of that 'community of interest' who are dues-paying members of the union.

Consequent on the signing of the Heads of Agreement between JCAA and JATCA on January 2, 2024, whether:

- (i) **In relation to the requirements of the Labour Relations Code governing good industrial relations praxis, certain provisions of the Agreement were breached by the JCAA,**
- (ii) **If so determined, what remedies, if any, are available to the Tribunal**

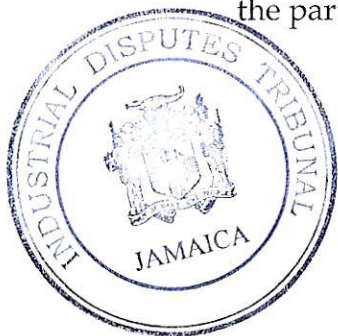
33. The theory and practice of industrial relations, recognize the distinction between 'a collective agreement' and a 'heads of agreement'. One school of thought suggests that Heads of Agreements (HOAs) are "preliminary agreements", "non-binding" and merely expressing an intent. Others have said that the legal

significance of an HOA can vary depending on the specific wording. In some cases it might be legally binding.

34. The distinction between the two may be evident when examined against paragraph 18 of the Labour Relations Code (the "Code") under Collective Agreements, where it states that –

"The major aim of the collective bargaining process is to arrive at terms and conditions acceptable to both employers and workers. These terms and conditions are usually enshrined in collective agreements, and often contain procedural and substantive provisions..."

35. What was signed on January 2, 2024, between JCAA and JATCA was a Heads of Agreement, and not a Collective (Labour) Agreement. This was acknowledged by the parties under clause 35.2.1 of the HOA in stating that:



"A Collective Labour Agreement (CLA) to encapsulate all areas of working conditions for the Members of the JATCA bargaining unit will be formulated.

Within twelve (12) months following the signing of this Agreement for which this Wage and Fringe Benefits claim is referenced, a special team shall be established with a Terms of Reference (TOR) to formulate and complete the CLA."

36. The question as to whether the HOA would attract the same considerations as a CLA in terms of its legality and enforceability seems to fall squarely within the jurisdiction of the Court by way of a judicial decision. Indeed, the courts have weighed in on the enforceability of collective agreements in the past. In the **National Workers Union and Collington Campbell v. the Jamaica Broadcasting Corporation**, Smith, CJ (as he then was) stated *that "a decision as to the legal enforceability of such agreements can only be made on an examination of the terms of each agreement"*. In the **Shipping Association** case² Carey, J. argued thus:

² See **R. v Industrial Disputes Tribunal, ex parte The Shipping Association of Jamaica** [1979].

"Such agreement will have to be considered on its own facts. Where the terms are precisely stated and are certain, there is no reason in law why the intention to be bound by the terms cannot be imputed to the parties."

37. Counsel for JCAA in his pleadings noted that no enforceable breach occurred, and that *"clause 5.9 cannot constitute an enforceable restriction on the JCAA's ability to compensate other employees who fall within the bargaining unit but are not dues-paying members of the JATCA."* On the other hand, the JATCA's representative, in his closing submission, averred that –



"... the terms of the HOA, which prescribed the specific details for the one-off payment were binding and constrained both Parties in relation to the applicability of the payments. These terms and conditions of the HoA were clearly breached by the management of the JCAA when they made the payments to other employees not named in the HoA and thus the Tribunal must award in favour of the JATCA."

38. It appears that what the Tribunal is being asked to do is pronounce on whether an enforceable breach had occurred. We respectfully decline. This is a matter, as we said earlier, for the courts to determine. What the Tribunal is obligated to do is to act within the confines given to it under the Act, and by extension the Labour Relations Code (the "Code"). To that end, based on the nature of the dispute before us, we believe Section 12(7) of the Statute governing 'Awards of the Tribunal' is applicable, where it states that –

"Where an industrial dispute referred to the Tribunal involves questions as to wages, or as to hours of work, or as to any other terms and conditions of employment, the Tribunal –

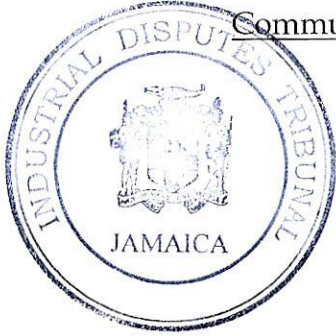
- (a) shall not, if those wages, or hours of work, or conditions of employment are regulated or controlled by or under any enactment, make any award which is inconsistent with that enactment."*

39. We are as much aware that industrial relations should be carried out within the spirit and intent of the Code. Its purpose *"...is to set out guidelines which in the opinion of the Minister will be helpful for the purpose of promoting good labour*

relations..." having to do with developing good human resource management techniques "...designed to secure effective co-operation between workers and employers and to protect workers and employers from unfair labour practices."

40. The Code further states where conflicts occur - recognizing those conflicts as inevitable - that *"... it is the responsibility of all concerned, management to individual employees, trade unions and employers' associations to co-operate in its solution."*

41. That co-operation is embodied in Part V, paragraph 19 of the Code, under Communication and Consultation. It states -



"Communication and consultation are necessary ingredients in a good industrial relations policy as these promote a climate of mutual understanding and trust which alternately result in increased efficiency and greater job satisfaction. Management and workers or their representatives should therefore co-operate in promoting communication and consultation within the organization."

42. It highlights the importance of communication as *"a two-way flow of information between management and workers or their representatives..."* and that *"... management should undertake to explain decisions which are likely to affect directly or indirectly the situation of the workers..."* When it comes to consultation this involves *"... seeking mutually acceptable solutions through a genuine exchange of views and information. Management should take the initiative in establishing and regularizing consultative arrangements appropriate to the circumstances of the undertaking in co-operation with the workers or their representatives."*
43. The matter before us would therefore have to be decided not on an interpretation of legal principles but on what is reasonable and fair, in other words, we are to act according to equity, good conscience and the substantial merits of the case without

regard to technicalities or legal forms. As Gallagher, J. in the **Long Service Leave (Engine Driver) Award** case, puts it -

"equity and good conscience required the Tribunal to have regard to such considerations as the requirements of natural Justice, the taking of a realistic view, the necessity of doing what is right and fair and honest between man and man, conscientious observance of rules of fair play, the quality of being equal or fair, common fairness as opposed to meticulous insistence upon the formalities of the law."

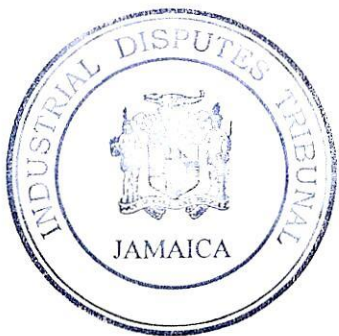
44. The HOA signed between the JCAA and JATCA on January 2, 2024, clearly sets out its purpose in paragraph 2 of the Agreement. It states -

"The purpose of this Agreement is to ensure that equity is established as far as practicable with the implementation of market rates of basic pay afforded to the members of JATCA and relative to the JCAA..."

45. Beyond basic salaries agreed on by the parties a one-off payment was made as a compromise to a negotiated settlement. A formula was computed for the payment which was referenced in clause 5.9 of the Agreement. clause 5.9, headed: Application of Weighted Average (one-off payment) contained the following:

"5.9.1. Payments have been agreed and are also being made based on the weighted average of salaries within the JCAA. This payment is being used to ensure that equity exists with basic salary Market alignment. Further, a "one-off payment" based on the aforementioned weighted average has been agreed and is being used as the mechanism to counteract salary compression and the creation of any anomalies that may exist for job posts directly related to those represented by the JATCA. This one-off payment is applicable ONLY to CURRENT JATCA MEMBERS and SHALL be recalculated if the original parameters on which they are predicated, become disturbed.

5.9.2. The current parameters for the weighted average have been calculated based on proposals in salaries for the JCAA, excluding the JATCA's members. At the signing of this agreement this figure has been determined to be NINETEEN PERCENT (19%) to

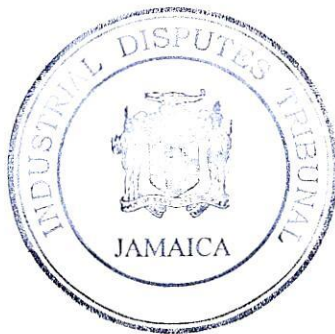


*maintain the internal relativity within the organization.
Application of this Weighed Average is as stated below*

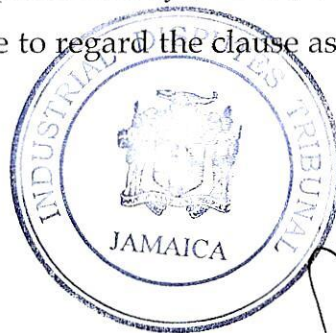
5.9.3. *Current JATCA Members will be paid as follows:*

- i. ATC and ATC related positions: NINETEEN PERCENT (19%) of their respective Year 1 Basic Salary as of April 1, 2023*
- ii. Other Categories (including Non-ATC related positions): A flat rate of ONE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$1,400,000.00)*
 - The list of JATCA members entitled to the applicable rates of One-Off Payment is affixed at Appendix 1 of this Agreement*
 - The One-Off Payment shall be subject to the applicable statutory deductions*
 - No One-Off Payment is to be made to Flight Data Processors."*

46. Counsel asserted that no evidence has been provided in support of JATCA's "central allegation" that the one-off payment was made to non-JATCA members. But that claim was not contradicted by the JCAA in its evidence. In fact, in an email correspondence from Mr. Solomon, JATCA's President, to Dr. Carvell McLeary, Director, Human Resources dated April 3, 2024, and copied to the Director-General and Deputy Director General, JATCA stated that it was made aware "...that the management was considering "offering" the one-off payment to non-members within the JCAA." Dr. McLeary's reply was not to deny but simply to say that "the views of the JATCA is well noted and same will be transmitted to the JCAA organization." The very fact that a dispute arose over that 'central allegation' is enough proof to conclude that the one-off payment was, in fact, made to non-JATCA members.

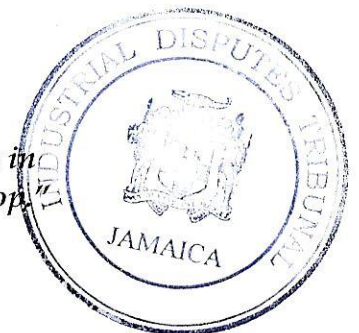


47. The central issue before the Tribunal is whether the payment to the non-dues paying members of the bargaining unit represented by JATCA disturbed existing equity arrangements that it was intended to address in the first place; whether it created anomalies within the existing salary structure at JCAA, and therefore can be seen as unequal and unfair.
48. JATCA outlined its case to the Minister of Finance and the Public Service, Dr. Nigel Clarke in a letter dated November 28, 2023. In that letter it acknowledged *"that the problem of equity remains given that the salaries for the other staff within the JCAA continue to move above their respective markets..."* However, it conceded that the *"one-off payment is not an ideal method of implementation of the weighted average given that it disappears immediately and has no bearing on future basic salary earnings..."* The one-off payment clearly did not affect the existing salary structure and therefore have no impact on 'future basic salary earning'. In that regard, and 'taking a realistic view', we have no basis upon which to even contemplate *"the necessity of doing what is right and fair and honest"*, or *"being equal and fair"*, as the spirit and intent of the Code contemplates. In fact, JATCA hinged its case on an entirely different wagon, that the payment to the non-dues paying members of the bargaining unit breached the HOA.
49. In light of Section 12(7) of the Act, we are being called upon to determine whether clause 5.9.3. of the HOA was breached where the one-off payment was made to non-JATCA members, and in the context where Section 12(7) precludes us from determining the matter without regard to existing legislative provisions. In that regard, where the relevant provisions of Section 5 of the Act speaks to the homogeneity of bargaining units, and where the effect of clause 5.9.3. would result in the bifurcation of the bargaining unit represented by JATCA, the compellingly logical response from the Tribunal would be to regard the clause as void and of no effect.



50. Even where we have concluded (rightly or wrongly) that clause 5.9.3. is void and of no effect, good industrial relations practice as envisioned by the Code would require no less of the JCAA than to engage in dialogue with JATCA about the amendment to the provisions, more so, in light of clause 40. The management of the JCAA faltered when it failed to communicate its intention to make the payment to non-JATCA members, and to claim to have relied on the approval of the Ministry of Finance and the Public Service could not shield them from reproach.
51. The Code stipulates as one of the major responsibilities of management the need to engage in “*good management practices and industrial relations policies which have the confidence of all...*” There should be no concealment of intent, the ‘escape and force’ approach reinforces the adversarialism that has traditionally characterized labour-management relationships and stymie the building of trust and confidence between the parties.
52. As Phillips, JA (as she then was) in her judgement in **ATL Group Pension Fund Trustees Nominee Limited v The Industrial Disputes Tribunal and Catherine Barber [2021] JMCA Civ. 4**, reiterated:

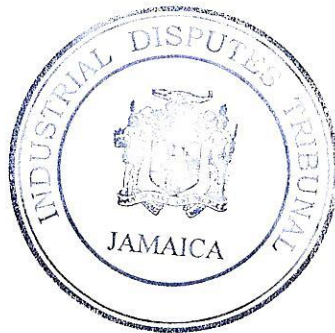
“[The Code] establishes the environment in which it envisages that the relationships and communications between [employers, workers and unions] should operate in peaceful solutions of conflicts, which are bound to develop.”



DECISION

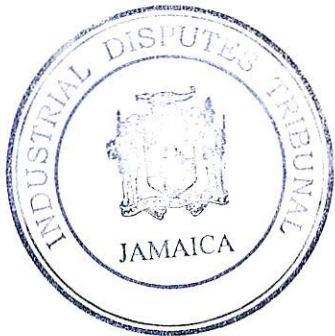
53. Based on the foregoing, the decision is as follows:
- a) Acting within the confines of the Statute and the common law, the Tribunal finds that the issue of ‘equity’ was neither pleaded nor proved that the one-off payment to non-JATCA members resulted in inequity in the existing salary structure at JCAA, or that it was unfair or unreasonable;

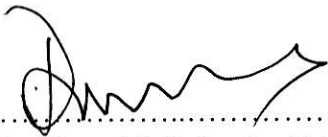
- b) No breach of section 5.9.3. of the Heads of Agreement occurred, as that clause, we believe, has to be seen as void and of no effect based on the following reasons:
- (i) Where it is solely predicated on limiting the benefits derived through the collective bargaining process to JATCA members, and depriving other workers within the bargaining unit from such benefits;
 - (ii) Where the unintended consequence of implementing the provisions of section 5.9.3., would be the bifurcation of the bargaining unit into JATCA and non-JATCA members, which would violate the premise on which collective bargaining units are established pursuant to Section 5 of the Act;
 - (iii) Where it would set a dangerous precedent, overturning the time-honoured practice of having members of the bargaining unit benefit from the outcome of the collective bargaining process, where such benefits do not create an anomalous situation;
 - (iv) Where Section 12(7) of the Labour Relations and Industrial Disputes Act, 1975, precludes the Tribunal for making any decision which would be inconsistent with the purpose and intent of existing statutory provisions, and as it relates to this case, this would be Section 5 of the Act.





- c) The JCAA's failure to communicate its intention to alter, change or amend section 5.9.3. of the Heads of Agreement regarding the one-off payment to non-JATCA members, was wrong and contravenes the intent and purpose of the Code in promoting good industrial relations practices.
- d) Having regard to (a) and (b) above, the Tribunal can provide no relief.

Dated this 26th day of August, 2025





.....
Mr. Donald Roberts, C.D., J.P.
Chairman


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Mr. Errol Beckford
Member


.....
Dr. Denese Morrison, J.P.
Member

Witness:


.....
Ms Tasha Pearce
Acting Secretary of the Division