

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 35/2012

SETTLEMENT OF DISPUTE

BETWEEN

KINGSTON WHARVES LIMITED

AND

**UNION OF CLERICAL, ADMINISTRATIVE AND
SUPERVISORY EMPLOYEES (U.C.A.S.E.)**

AND THE

AWARD

I.D.T. DIVISION

MR. NORMAN WRIGHT, Q.C. - CHAIRMAN

MR. RION HALL - MEMBER

MR. D. TREVOR McNISH - MEMBER

MARCH 20, 2015

IDT 35/2012

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

KINGSTON WHARVES LIMITED
(THE COMPANY)

AND

UNION OF CLERICAL, ADMINISTRATIVE AND SUPERVISORY
EMPLOYEES
(THE UNION)

REFERENCE:

By letter dated November 21, 2012 the Honourable Minister of Labour and Social Security pursuant to Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

"To determine and settle the dispute between Kingston Wharves Limited on the one hand and the Union of Clerical Administration and Supervisory Employees on the other hand, over the termination of employment of Mr. Marlon Gordon."

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:

Mr. Norman Wright, Q.C	-	Chairman
Mr. Rion Hall	-	Member, Section 8(2)(c)(ii)
Mr. D. Trevor McNish	-	Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF PARTIES:

The **Company** was represented by:

Ms. M. Angela Robertson	-	Attorney-at-Law
In attendance were:		
Mr. Grantley Stephenson	-	Chief Executive Officer
Miss Valrie Campbell	-	Operations Manager
Mrs. Roselee Scott Heron	-	Human Resource & Administration Manager
Mr. Mark Williams	-	Chief Marketing Officer

The **Union** was represented by

Mr. John Levy	-	Assistant General Secretary
In attendance was:		
Mr. Marlon Gordon	-	Aggrieved Worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties and oral submissions made during sixteen (16) sittings, from February 4, 2014 to November 24, 2014.

BACKGROUND TO THE DISPUTE:

The **Company** is located within Kingston Harbour the seventh largest natural harbour in the world located on the southern side of the island of Jamaica at latitude 17° 50'N and longitude 76° 48'W in the Caribbean Sea.

It operates a multi-purpose terminal, which is publicly owned and whose operations are contained solely on the wharf and is regulated by the Government of Jamaica through the Port Authority of Jamaica (“the Authority”).

The port terminal provides a full-range cargo handling and logistics services 24 hours per day, 7 days per week including:

- Mooring and Unmooring of Vessels
- Stevedoring
- Equipment Rental
- Stripping and Stuffing of Containers
- Storage and Warehousing
- Reconstruction of Containers
- Cargo Handling Services
- Transshipment
- Refrigerated Container Management & Support

Transshipment

The Company’s transshipment service has achieved exponential growth over the last decade. Two of the Region’s premier shipping companies utilize the Company’s terminal as their transshipment hub, operating weekly feeder services to Caribbean and Latin American Ports. The regional transshipment hub for one of the world’s leading motor vehicle carriers is managed by the Company, the first direct service of its kind from Europe to Jamaica.

The terminal has developed into an efficient cargo receipt, storage and delivery facility, with operations involving shippers, shipping lines, agents, stevedores, consolidators, de-consolidators, customs officers, customs brokers and consignees at the hub of the operations.

Services

The wharves operate twenty-four hours per day, three hundred and sixty-five days per year. Services provided include but are not limited to berthing of vessels, stevedoring, receiving, storing and delivering of cargo, stripping and stuffing of containers and provision of reefer facilities.

The Company consists of two divisions; Operations and Administration. The Operations Division provides the core services of receipt, storage, delivery of cargo, import, export and transshipment.

The Administration Division provides the support services needed for the effective, efficient functioning of the Operations Division. There is a Finance Department with Accounts - Billing Accounts - Payables, Credit, Payroll and Claims Sections. Customer Service, Human Resources, Information Technology and Audit are the other departments in Administration

The Authority

Is a statutory Corporation established by the Port Authority Act of 1972 ("the Act"). It is the principal maritime agency responsible for the regulation and development of Jamaica's ports and shipping industry. The Authority is responsible for the safety of all vessels navigating the ports of entry and regulation of the tariffs charged on goods passing through the public wharves.

Section 7(1) of the Act sets out the powers of the Authority. This section states, inter alia, that anyone who contravenes any directions given by the Authority shall be guilty of an offence the penalty for which will be a fine or imprisonment.

Section 11 of the Act gives the Authority the power to make by-laws. Under this section the Authority has the right to make by-laws governing, inter alia, the right to exclude or **remove from the premises of the Authority idle, disorderly or other undesirable persons and to regulate the conduct of persons employed on wharves and premises vested in its possession.**

Pursuant to the provisions of Section 11 of the Act the Port Authority (Port Management and Security) By-laws 2009 (“The Regulations”) were promulgated. The Regulations define, inter alia, a **“Wharf Company”** as meaning a **Company or any other person or body of persons operating port facilities.**

The Regulations deal with the use and operations of the Ports and the relevant approvals that have to be obtained by persons or entities utilizing these facilities. Sections 10 and 11 are applicable to the dispute before the Tribunal.

Section 10 of the Regulations deals with security measures at port facilities. These Regulations provide the Authority with the legal right to issue and withdraw authorization from any person to whom any prescribed identification is issued. Further, it mandates that anyone to whom the identification document is issued shall comply with the terms and conditions upon which it was issued. Pursuant to Section 10, it is mandatory that once the Authority requests the prescribed identification document, it shall be surrendered forthwith; there is no choice available to the person to whom it is issued.

Mr. Marlon Gordon

By a letter dated December 30, 1994, Marlon Gordon was confirmed in the post of a Container Marshall at the Company with effect from 1st January 1995.

By letter dated September 18, 2006, he was promoted to the position of Stevedore Coordinator and occupied that position up until his contract of employment was

terminated by letter dated November 2, 2011. The letter outlined the salary to be paid, as well as other terms and conditions of employment. Mr. Gordon worked in several other job categories during his years at the Company.

By letter dated October 31, 2011, the Authority pursuant to its legal right under the Act and the Regulations, wrote to the Company's Chairman & CEO and included the following terms:

“Pursuant to Regulation 10(4) (b) of The Port Authority (Port Management and Security) Regulations, 2010, The Authority is requiring that the prescribed identification cards held by the persons named on the attached list be surrendered forthwith to The Authority.

Consequently, we are requesting that you retrieve the Port Identification Cards from these persons who are in your employ and return them to the Vice President of Security at The Port Authority of Jamaica by Wednesday, November 2, 2011.”

Attached to that letter were names of nine (9) Identification Card Holders, including that of Mr. Marlon Gordon, all of whom were dealt with in the same way by the Company. Pursuant to its legal obligations under the Act and the Regulations, the Authority had mandated that the Company retrieve the Port Identification Cards from the relevant holders and return them to the Authority by Wednesday, November 2, 2011.

Upon receipt of the letter from the Authority the Company said it had no alternative but to write to Mr. Gordon terminating his contract of employment, stating the terms based on the provisions of the Act and the Regulations which included:

“The revocation of your prescribed identification document means that you are unable to perform the job for which you were employed. In the circumstances we have no alternative but to terminate your contract of employment with immediate effect.”

The Company submitted that at all material times all employees of the Company, were aware of and knowledgeable of their obligations to have a Port Identification Card and that without the same, they would not be able to access the Port and thereby not be able to perform the job for which they were employed.

The Union of Clerical, Administrative and Supervisory Employees is a registered **Trade Union** which gained bargaining rights for certain categories of workers at the Company in 2008, to include the categories held by the affected employee. Consequently, at the material time, it had bargaining rights in respect of the following categories of employees working with the Company:

- System Engineer
- Supervisor Motor Vehicle
- Snr. Account Payables Clerk
- Stevedore Coordinator -1
- Secretaries
- Planner
- Snr. Account Receivables Clerk
- Inventory Clerk
- Administrative Assistant
- Supervisors
- Accounts Clerk

During wage negotiations between the Union and the Company in late 2011, it was revealed to the Union that several employees were dismissed from their jobs including one member of the Union. This information was communicated to the Union by the Chief Delegate, Mr. Floyd Ferguson.

THE COMPANY'S CASE

In its attempt to persuade on the Tribunal that the contract of employment of Marlon Gordon was frustrated by the revocation of his Port Identification Card, the Company adduced evidence and made submissions as set out below:

1. That arising from the events of what is generally referred to as 9/11, the Port Authority of Jamaica, which is responsible for the regulation of Ports and for the safety of all vessels navigating the Ports of Jamaica, introduced new security measures in 2005. This, being consistent with its mandate under the International Maritime/International Ship and Port Facility Security (IMO/ISPS) Code, to ensure that security systems, standards and procedures at port facilities, comply with International Maritime Conventions.
2. That Kingston Wharves Limited being one of the agencies utilising the facilities at the Port of Kingston, is mandated pursuant to the provisions of Section 10 of the Port Authority (Port Management and Security) By Laws enacted in 2009, to comply with the instructions, rules and regulations of the Authority, as it relates inter alia, to the operations at port facilities, the entry and exit there from and the movement of individuals, goods and equipment therein.
3. That prior to the introduction of the new security measures, Kingston Wharves Limited, as an employer of personnel who operates from the Port of Kingston and which is regulated by the Port Authority of Jamaica, familiarised its employees about these new security requirements through staff meetings and postings on notice boards.
4. That one important feature of the new security measures was the issuance of Port Identification Cards to gain access to the Port. This Port Identification Card referred to by employees as a "pass" allows access to prescribed areas of the Port. Before a port worker is issued with a "pass", he/she is required to undergo a process which involves security clearance, criminal background check and fingerprinting.

5. Marlon Gordon was one of the employees of Kingston Wharves Limited, who was affected by these new security measures which were introduced in 2005, as he had been working on the port since 1994. At that time, these measures were not in place, as previously, employee Identification Cards would be processed and issued by Kingston Wharves, without the necessity for the requirements introduced in 2005.
6. Marlon Gordon had attended the familiarisation meetings that Kingston Wharves Limited held to educate its employees about the new security measures and he had also participated in the process by acquiring a Port Identification Card which he used to gain access to the Port, until it was revoked in November of 2011.
7. That in October 2011, pursuant to Regulation 10(4) of the Port Authority (Port Management and Security) Regulations, 2009, the Head of Port Security wrote to Kingston Wharves Limited requesting that the prescribed identification cards held by a number of its employees including Marlon Gordon “be surrendered forthwith to the Authority.”
8. That in light of this request from the Port Authority, Kingston Wharves Limited had no alternative or recourse but to terminate the contract of employment of Mr. Gordon, he being one of those employees whose “pass” was requested to be surrendered.
9. As a consequence of the Port Authority’s request for Marlon Gordon’s “pass” to be surrendered, Kingston Wharves Limited, the employer, by letter dated November 2, 2011, wrote to Marlon Gordon pointing out the following :

“Dear Mr. Gordon:

Pursuant to the provisions of Section 10 of The Port Authority (Port Management and Security) By-Laws 2009 (“the By-Laws”) which were made in exercise of the power conferred upon the Port Authority (“the Authority”) by Section 11 of the Port Authority Act (“the Act”), the Authority may in approving security arrangements authorize any person to issue on its behalf “prescribed identification documents” of various types respecting access to specified areas of the port facilities. If anyone is found in any specified area without the aforesaid document such person commits an offence under the Act.

However, S. 10(a) of the By-laws also states:

“Any prescribed identification document shall be surrendered forthwith to the Authority or to the person by whom it was issued

(a) ...

(b) upon request of the Authority or the person by whom it was issued...”

In accordance with its statutory obligation the Authority has informed us that it intends to revoke your prescribed identification document forthwith. Having been issued with prescribed identification documents the holder is mandated to comply with the terms and conditions subject to which it is issued (S. 10(5)).

In addition as occupiers of the port we are mandated by the By-Laws to comply with the instructions, rules and regulations of the Authority as it relates, inter alia, to the operations at port facilities, the entry and exit therefrom and the movement of individuals, goods and equipment therein. Any failure on our part to comply with the instructions of the Authority would result in our breach of the By-Laws.

In accordance with your terms and conditions of employment you are employed as a stevedore coordinator effective September 1, 1994. To fulfill your contractual obligations you would be required to have your prescribed identification document. Your presence on the Port without this document would be in breach of Sections 10(3) and 11(2) of the aforesaid By-Laws which would result in your committing an offence.

The revocation of your prescribed identification document means that you are unable to perform the job for which you were employed. In the circumstances we have no alternative but to terminate your contact of employment with immediate effect.

We enclose herewith Cheque No. 234 in the amount of \$182,553.44 which represents all sums due to you for salary to date, notice pay, vacation leave earned but not taken up to date of termination and refund of your pension contribution. Please return all property of the Company to Miss Deanne Coriah by 4:30 p.m. today.

Yours faithfully
KINGSTON WHARVES LIMITED

Grantley Stephenson
CHIEF EXECUTIVE OFFICER"

10. At all material times, all employees employed to Kingston Wharves Limited, including Marlon Gordon, were aware and knowledgeable of their obligations to have a Port Identification Card and that without the same, they would not be able to perform the job for which they were employed, as they would be denied access to their prescribed areas.
11. That after Marlon Gordon's contract of employment was terminated Kingston Wharves Limited had discussions with the Trade Union representing him with a view to settling the matter at the local level, as the Union did not want to pursue the route of an Appeal as is set out in the Port Authority of Jamaica Electronic Access Control System guidelines as follows:

Appeals

In the event of a failure to be issued an identification card, or the revocation of an identification card, the complainant may submit an appeal to the Port Authority of Jamaica's, Security Department for review.

The PAJ in consultation with the facility, for which the application is being made, may give consideration for records that have been expunged, or time spent.

12. The loss by Marlon Gordon of his Port Identification Card “pass” for entry to the Port to perform the duties for which he was contracted, struck at the very root of his contract of employment and would not have been contemplated by the parties as, without that pass issued by the Authority, he would not be able to perform the job functions for which he was employed as it would be impossible to bind the parties to the terms of the contract of employment and the contract would be **frustrated** by that event.
13. The frustrating event would have occurred on the date that the Authority wrote to Kingston Wharves Limited, indicating that the Port Identification Card belonging to Marlon Gordon should be surrendered as stated, and led to an exceptionally grave circumstance or event which frustrated the performance of the contract of employment forthwith.
14. Kingston Wharves Limited by its actions was therefore not in breach of the rules of natural justice as outlined by the Airport Authority of Jamaica’s case, nor the Labour Relations Code, as Gordon’s contract of employment was **frustrated** by the revocation of his Port Identification Card by the Port Authority of Jamaica.
15. Kingston Wharves Limited having no alternative location to transfer Marlon Gordon to, and in light of the fact that it had no alternative but to carry out the instructions of the Authority, the provisions of the Labour Code would not be applicable.
16. The tribunal should be guided by the principles enunciated by the judgement of the Airport Authority of Jamaica’s case, as that entity is governed by legislation similar to that of the Port Authority of Jamaica and falls in the category of what is referred as **licence cases**.

THE UNION'S CASE:

In its attempt to persuade the Tribunal that the termination of this employees' contract of employment cannot be justified, the Union adduced evidence and made submissions as set out below.

1. Marlon Gordon was initially employed to Kingston Wharves Limited in December 1994 as a Container Marshall. He worked in several other job categories and at the time his contract of employment was terminated, he was serving in the position of Stevedore Co-ordinator. At the time of the severing of the employment relationship, Gordon had an impeccable and flawless disciplinary record.
2. In 1994, when Marlon Gordon entered into an employment contract with Kingston Wharves Limited, there was no requirement for him to be in possession of a Port Identification Card as said Kingston Wharves Limited processed and issued the Identification Cards to the employees. Therefore, the requirement for this employee to be in possession of a Port Identification Card was not a term of his contract of employment.
3. On the morning of November 3, 2011, he attended work in the normal manner but was denied entry to the Port to perform the job he was contracted to Kingston Wharves Limited to perform.
4. After he was denied access to the Port, he visited the Head Offices of his employer, Kingston Wharves Limited, and no one from the Human Resource Department said a word to him. Instead, he was handed a letter, the contents of which, disclosed to him that his contract of employment was terminated by Kingston Wharves Limited. The letter states at paragraph 5 that:

“The revocation of your prescribed identification document means that you are unable to perform the job for which you were employed. In the

circumstances we have no alternative but to terminate your contract of employment with immediate effect.”

5. Owing to the fact of Marlon Gordon’s impeccable disciplinary record, his good standing with his employer and the absence of any allegations or accusations of misconduct made against him, and no breach or infraction disclosed to him, he sought the assistance of his Union, which contacted Kingston Wharves Limited and held discussions on the matter. Those discussions ended in a stalemate, resulting in the matter being referred to Conciliation and ultimately Arbitration.
6. According to the Electronic Access Control Programme which is a set of guidelines prepared by the Security Department of the Port Authority of Jamaica and issued to Kingston Wharves Limited, there are a number of breaches, which when committed, may result in the revocation of any “Prescribed Document”, and the Port Identification Card falls under this category.

Revocation of Passes

All personnel and equipment will be required to comply with the security and safety regulations and guidelines governing Port Facilities. Passes may be revoked for any security/safety breaches, which include but are not limited to the following:

1. *Being in possession of any unlicensed firearm, other dangerous weapons or narcotic drugs while on the facility.*
2. *Being engaged in theft or found in possession of any valuables belonging to the facility.*
3. *Assisting with the trafficking of illegal drugs, guns, ammunition or any unlawful substances or goods.*
4. *Exceeding the posted speed limits or dangerous operation of equipment or vehicles while on the facility.*

5. *Failing to comply with instructions of authorized personnel, or to cooperate with security/safety personnel.*

Marlon Gordon has not, to his knowledge, and he was not informed by the relevant authority that he is in breach of any of the above or any breach otherwise.

7. It is therefore unreasonable, unfair and unjust for his “pass” to be revoked under these circumstances, which are devoid of due process, inconsistent with procedural fairness, contrary to the rules of natural justice and in particular, is in violation of the Labour Relations Code, especially Section 22, thereof.
8. The process leading to the implementation of the new security measures in 2005, had a number of weaknesses and deficiencies wherein:
 - (a) the Union, as representatives of the employees, were never consulted nor informed about the impact of these new regulations on the employees’ contracts of employment,
 - (b) employees were familiarised about the new measures with focus placed on the necessity for security checks, criminal records and finger printing, with no mention or concentration of the implications the By-Laws set out in the Regulations, on the employees contracts of employment;
 - (c) the guidelines set out in Electronic Access Control Programme document published in the form of a booklet was never issued to the employees or the Union.
9. As a result of the Union’s and the employee Marlon Gordon’s lack of knowledge about the Appeal process, they were not in a position to pursue this avenue. For this course of action to be pursued, the employer, Kingston Wharves Limited, had a responsibility to inform the employee of his options and rights under the Regulations, before embarking enroute to the termination of the contract of employment.

10. The decision to revoke Marlon Gordon's Port Identification Card in flagrant disregard of due process, must be contrasted against the approach taken by United States Embassy in Jamaica which, at or about the same period, acting on information from whatever source it came, called up Marlon Gordon and Jeffery Martin, another employee whose "pass" had been revoked in the same manner and who are both holders of American visas, questioned them and at the end of the questioning, having found nothing against them, released them with their visas intact.

11. Taking into consideration all the circumstances of this matter, it cannot be held that this contract of employment has been **frustrated**, as **frustration** connotes that the event resulting in the **frustration** of the contract must be **unforeseen** and the revocation of Port Identification Cards cannot be regarded as **unforeseen**.

12. Therefore, the termination of this contract of employment cannot be justified for the following reasons:
 - a) The termination is unjustifiable as the test for procedural fairness has failed miserably;
 - b) Marlon Gordon was not given an opportunity to hear the accusation against him or to face his accuser;
 - and
 - c) The employer operated in total disregard of the rules of natural justice and failed in its obligation to inform the employee properly or at all, about the full implications of the new security measures.

TRIBUNAL'S RESPONSE

1. These types of cases are not common and pose several challenges to all parties concerned, including those who have to adjudicate on them. This is a case which can be placed under the rubric of those characterised as "dismissal at the behest of a third party." The company which is the employer is a client of the Port

Authority of Jamaica which has the power and authority to make rules and regulations for the good conduct of operations at the Port.

2. In this case, the Port Authority has taken action against the employee for undisclosed reasons, by the revocation of a Port Identification Card issued to him to facilitate his entry to the Port to perform duties which he had an obligation to perform under his contract of employment with the Kingston Wharves Limited. The effect of the revocation of the employees "pass" is that he has been prevented from entering his place of work in order to perform his duties although he is willing and available so to do.
3. Note is taken of the fact that at the time of his employment, he entered into a contract of employment with Kingston Wharves Limited, which was devoid of any stipulation that he would require a Port Identification Card to enter his place of work. However, when these new security measures were introduced, he complied fully with all the requirements resulting in him being issued with a "pass". On the expiration of the "pass" it was renewed without any problem. Notwithstanding the foregoing, on a day in November 2011, he turned up for work and was told that his "pass" has been revoked and that he would not be allowed to enter the Port. On his visit to the office of his employer, no officer of the Human Resource Department offered him any explanation or advice. Instead he was handed a letter which informed him that his contract of employment was terminated. This, against the background that this was an employee who at the time had contributed fifteen years of diligent work to his employer, without blemish.
4. This Tribunal must now consider whether the termination of the employee's contract of employment was fair in all the circumstances. The Union has pointed to procedural breaches which would render the termination of the contract unfair while on the other hand the company has maintained that the matter of procedural

fairness is of no merit on the facts of this case where the evidence points to the contract being frustrated.

5. Again, the remit of the Tribunal is to determine and settle disputes and this also involves an examination of the reasonableness of the employer's conduct in terminating the contract of employment. In the Airport Authority case introduced to the proceedings by counsel for the company **the case of McInnes v. Onslow-Fane (1978) 3 Sec. E. R. 211 is cited where the learned Judge Sir Robert Megarry** categorised these types of cases referred to as "**licence cases**" into three categories "**forfeiture cases**", "**application cases**", and **expectation cases.**"
6. This Tribunal would place the revocation of this employee's Port Identification Card in the "**forfeiture case**" category where Megarry V.C. explains that ;:

"In these is a decision which takes away some existing right or position as where a member of an organization is expelled or a licence is revoked."

The Port Identification Card is akin to a licence. The "**forfeiture cases**" must be contrasted to "**application cases**" where according to Megarry V.C,

"these are cases where the decision merely refuses to grant the applicant the right or position that he seeks, such as membership to the organization."

7. The learned vice-chancellor went on to say:-

"It seems plain that there is a substantial distinction between the forfeiture cases and the application cases. In the forfeiture cases there is a threat to take something away for some reason, and in such case the right to an unbiased Tribunal, the right to notice of the charges and the right to be heard in answer to the charges (which in Ridge v. Baldwin

Lord Hudson said were three features of natural justice which stood out are plainly apt.”

He went on further to make a distinction between the “**application cases**” in which category we would place the case of **Ripton Charles Wedderburn and Airport Authority of Jamaica, Claim No. 2008 HCV 00170**(“the AAJ case”) falls and the “**forfeiture cases**” under which category we would place the revocation of this employee’s Port Identification Card by pronouncing that:

“In the application cases on the other hand nothing is being taken away and in all normal circumstances there are no charges and so no requirement of any opportunity of being heard in answer to the charges.”

The Tribunal notes that the employees’ Port Identification Card was revoked without him being given a right to be heard in answer before the decision was executed.

8. The conduct of and approach taken by the employer must come under scrutiny. Here was an employee with fifteen years of legal service who had committed no breach known to his employer, neither was he accused of any misconduct known to anyone and was losing his job without knowing why and his employer did not act on his behalf to assist him to retain his job.

The Tribunal is firmly of the view that the employer had an obligation to assist the employee by informing him of his rights and offering guidance as to the procedure to be followed. This was even more desirable, in light of the evidence that the employees were not told about the complex details of the By-Laws, nor were they provided with copies of the booklet “Port Authority of Jamaica Electronic Access Control System Guidelines” (Exhibit 1), is taken into consideration. We therefore conclude, that the employers’ conduct in this matter, where the employee stood to suffer substantial injustice, cannot be considered

reasonable in all the circumstances. (*K. Henderson v Connect (South Tyneside) Ltd.* UKEAT/0209/09.

9. An examination of the Revocation provision set out under the By-Laws of the Regulation to the Port Authority Act (1972) reveals' that Section 8-(4) reads as follows:

“(4) Before revoking an approval under subsection (3), the Authority shall notify the holder in writing of the proposed revocation stating the reasons therefor.”

Also, Section 23-(1) of said Regulations reads as follows:

Appeals

“Any person aggrieved by the refusal of the Authority to grant an approval or the suspension or revocation by the Authority of his approval, may, within fifteen days of being notified in writing of such refusal, suspension or revocation, appeal in writing to the Minister who shall thereupon appoint a Tribunal pursuant to paragraph (2) to hear and determine the appeal”. (emphasis supplied)

It has been submitted that under the Regulations. Section 8-(4) of the By-Laws would not apply in the case of an employee whose “pass” is being revoked, as under Section 3 there is no category named which covers employees.

The Port Identification Card must be regarded as an Approval Document as it fits the description and is issued by the Port Authority, after the applicant meets the requirements. It would therefore be cause for alarm if the legislation is interpreted in a manner which promotes the adherence to due process and natural justice as in (8-(4)), to some users of the Port, while denying it to others as is evident in the case of Marlon Gordon. We find it appropriate to rely on extract from the judgement of **Parnell J**, in the matter of (**R.v. Commissioner of Police ex parte Tennant (1977)26 W.I.R.**) where he said:

“ And I would be surprised if an Act of Parliament can be found in these modern days which would support a contention that the rules of natural justice can be relegated to a furnace by a Tribunal when a man’s reputation, his right to work and his right to property are at stake.”

Justice Parnell further asserted that:

“if he is to be dismissed with all the odium which a dismissal carries then he should know before hand the ground on which such a strong decision is based and natural justice demands that he be given an opportunity to defend himself.”

The matter of an Appeal to the Port Authority has been raised, but we are not convinced of its effectiveness in this case, bearing in mind that no reasons for the **revocation** of the **Identification Card** was provided to the employee and accordingly no grounds on which to file an Appeal. We also take note of the fact that the Port Authority of Jamaica did not communicate directly with Mr. Gordon but with Kingston Wharves Limited and this communication was not copied to him either.

Accordingly, in light of all that we have outlined above, the termination of the contract of employment of Marlon Gordon cannot be justified.

AWARD:

The Tribunal accordingly finds that the termination of the contract of employment of Marlon Gordon is unjustifiable and in accordance with Section 12 (5) (iii) of

the Labour Relations and Industrial Disputes Act (1975) make the following award that Kingston Wharves Limited:

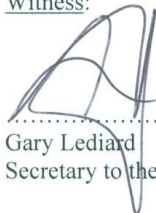
(a) reinstate him in his employment on or before April 20, 2015 with payment of eighteen (18) months salary at the current rate for the position he held at the time the contract of employment was terminated,

or

(b) failure to act in accordance with (a) pay him Compensation with a sum being the equivalent of three (3) years salary at the current rate for the position he held at the time the contract of employment was terminated, as relief.

DATED THIS 20 DAY OF MARCH 2015.

Witness:


.....
Gary Lediard
Secretary to the Division


.....
Mr. Norman Wright, Q.C.
Chairman


.....
Mr. Rion Hall
Member


.....
Mr. D. Trevor McNish
Member