

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 36/2022

SETTLEMENT OF DISPUTE

BETWEEN

MARKSMAN LIMITED

AND

ROBERT EDWARDS

AWARD

I.D.T. DIVISION

MRS. SHARON ANDERSON	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
DR. DENESE MORRISON, JP.	-	MEMBER

MAY 14, 2024

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

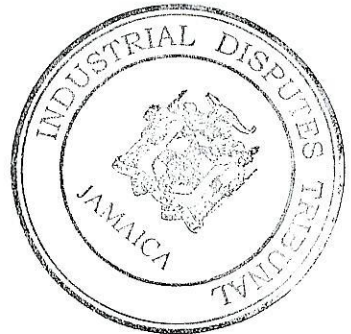
AN INDUSTRIAL DISPUTE

BETWEEN

**MARKSMAN LIMITED
(THE COMPANY)**

AND

**ROBERT EDWARDS
(THE AGGRIEVED WORKER)**



REFERENCE:

By letter dated September 27, 2022, 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 (“the 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 Marksman Limited on the one hand, and Robert Edwards on the other hand, over the termination of his employment”.

By letter dated January 31, 2024, the Hon. Minister of Labour and Social Security amended the Terms of Reference to read as follows:

“To determine and settle the dispute between Marksman Limited on the one hand, and Robert Edwards on the other hand, over the termination of his 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:

Mrs. Sharon Anderson	-	Chairman
Mrs. Jacqueline Irons, J.P.	-	Member, Section 8(2) (c) (ii)
Dr. Denese Morrison, J.P.	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Mr. Silvera Castro	-	Group Industrial Relations Manager
Mr. Dalmain Small	-	Industrial Relations Manager

The **Aggrieved Worker** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
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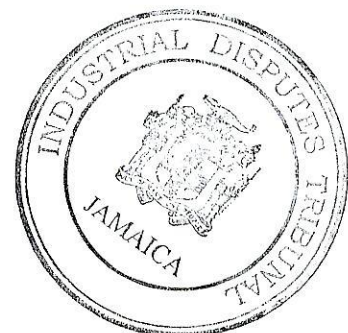
In attendance was:

Mr. Robert Edwards	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during eight (8) sittings held between June 7, 2023, and October 24, 2023.

The Panel that was initially selected to hear and settle the dispute consisted of Mrs. Sharon Anderson, Chairman; Mrs. Jacqueline Irons, Member; and Mr. Clinton Lewis, Member. It should be noted that at this stage, two (2) sittings were held, however, the Company had not started presenting its case. In March 2023, Mr. Clinton Lewis died and as such, Dr. Denese Morrison, Member, was selected to fill the vacancy. The parties were written to in accordance with Section 8(4) of the Labour Relations and Industrial Disputes Act (LRIDA) and started the matter *de novo*.



BACKGROUND TO THE DISPUTE:

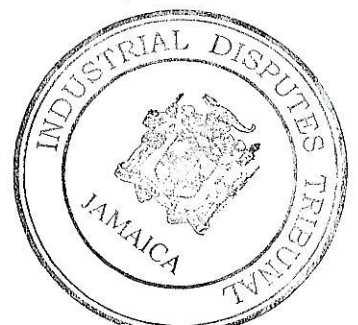
Marksman Limited (hereinafter referred to as the Company) is a member of the Guardsman Group of Companies and specializes in armed, unarmed, and canine handling services. Mr. Robert Edwards was employed to Marksman Limited as a Security Contractor in 2012.

Mr. Robert Edwards' services were terminated on February 3, 2016, for breaches of the Company's rules and regulations regarding the misuse of a firearm and the abandonment of his location. He protested his termination and engaged the services of Mr. Howard Duncan, Industrial Relations Consultant.

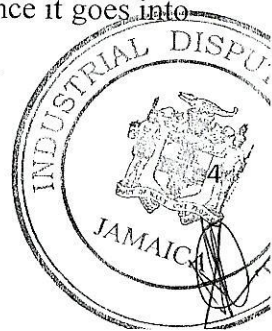
Mr. Duncan sought the intervention of the Ministry of Labour and Social Security. No resolution was reached, and hence, the matter was referred to the Industrial Disputes Tribunal for its determination and settlement.

THE COMPANY'S CASE:

1. Retired Major Michael Garfield Goulbourne of the Jamaica Defence Force (JDF) was the sole witness called by the Company. His position at the Company at the time of Mr. Edwards' termination was that of Operations Manager.
2. He testified that Mr. Edwards was employed to Marksman in the capacity of Security Contractor for a period of one (1) year, commencing on May 7, 2012, and ending on May 6, 2013. Subsequently, he was re-engaged in several one (1) year contracts until the termination of his services on February 3, 2016. Mr. Edwards, after his termination, applied to the Guardsman Group of Companies for a job as a Security Guard and was successful. He was placed at Marksman on December 8, 2021, as a Security Contractor.
3. During the initial period of Mr. Edwards' contract of employment, he was cited for several disciplinary breaches, such as using indecent language to another Security Contractor, disrespectful behaviour to another Security Contractor, insubordination, and a lack of punctuality. He was placed on three (3) months probation, and a final warning was issued on September 4, 2015.



4. On January 27, 2016, Mr. Edwards was charged for handing over his assigned firearm to an unauthorized fellow Security Contractor and leaving his assigned location without being properly relieved. It is the evidence of Major Goulbourne that Mr. Edwards was scheduled to provide security duties at the China Harbour K-2 between the hours of 7:00 p.m. and 7:00 a.m., he however, left at 5:00 a.m. This, Major Goulbourne stated, was in direct contravention of the Company's Rules and Regulations and the Firearms Act.
5. As a result of this, Major Goulbourne testified that Mr. Robert Edwards had abandoned his post. He also stated that Mr. Edwards was in breach of Clause 18b of his signed contract which reads, *"this agreement shall be terminated:*
(b) for misuse of a firearm, including but not limited to parting with the firearm or carrying out any criminal or illegal activities."
6. Subsequent to the charge, Mr. Edwards was issued a Notice of Hearing on Thursday, January 28, 2016, which was duly accepted and signed by him on Friday, January 29, 2016. On the Notice, it stated that Mr. Edwards was allowed to bring a representative.
7. Major Goulbourne testified that the hearing was held on Wednesday, February 3, 2016, and present at the hearing were Mr. Griffiths Williams, Area Manager; Ms. Althea Williams, HR Manager; Major Goulbourne, Operations Manager; and Mr. Edwards. He stated in evidence that *"at about 0500 hours Security Contractor Robert Edwards hand over his service revolver to Security Contractor James Harvey and left the location without being relieved."*
8. Major Goulbourne further testified that at the disciplinary hearing, Mr. Edwards did not deny that he left the location and accepted that he handed over the weapon to the other Security Guard. Major Goulbourne's evidence is that the Supervisor, Mr. Williams, told him that Mr. Edwards was not present at the location and that the guard on duty was Mr. James Harvey, who had the weapon that was assigned to Mr. Edwards. He said that Mr. Edwards violated not only Marksman rules but also the Firearm Licensing Authority rules by handing over his firearm to a person who had no permit for the purpose of handling that weapon. Major Goulbourne testified that once it goes into the hands of the other guard, the firearm and ammunition are classified as 'illegal'.



9. He further testified that, at the end of the disciplinary hearing, Mr. Edwards was found guilty, and the decision was taken to terminate Mr. Edwards' contract of employment which is customary and a part of the Company's procedures. A letter of termination was prepared, however, numerous attempts were made by the Company to have Mr. Edwards collect same but he refused. The termination letter was tendered into evidence and accepted as Exhibit VII.
10. The handling of the infraction was done consistent with the provisions of the law and the Labour Relations Code in that Mr. Edwards was offered a formal notice of hearing on January 28, 2016. Mr. Edwards acted very irresponsibly; he was reckless in how he treated the matter. He placed persons at risk and violated the law because firearms are issued and must be handled by persons who are authorized. In leaving the firearm in the custody of another employee, he exposed that employee to breaches of the Firearm Provisions under the Firearm Licensing Authority (FLA). He exposed the Contractor to possible risk and the Company as well to the risk of having violated the provisions and terms under which they have been authorized to operate and use the firearm in the conduct of their business.
11. The Company's Security Contractors are all aware that they are obligated to remain on duty until they are properly relieved and/or given the approval to excuse themselves from their assigned duty. Therefore, Mr. Edwards' decision to leave the location would, in essence, mean that he abandoned his post without having received due authorization to be absent from his assigned location.
12. Major Goulbourne averred that Mr. Edwards committed an egregious offence by allowing the firearm assigned to him to be in the possession of an unauthorized Security Contractor. Mr. Edwards also placed the Company in a compromising position based on the firearm permits that were issued to the Company by the Firearm Licensing Authority.
13. The Company made submissions as it relates to Security Guards being independent contractors. It contends that there may be some inherent conflict in terms of whether or not an employee/employer relationship existed or whether or not it is in conflict with the contract of employment that Security Officers, including Mr. Edwards, would have signed.

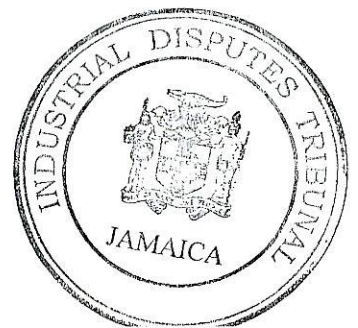


14. The Company contends that:

- a. at all material times, Mr. Edwards was afforded an opportunity to be heard and the right to due process.
- b. Mr. Edwards was provided with an opportunity to defend himself against the allegations.
- c. Mr. Edwards' rights to natural justice were not breached, as he was afforded a hearing and allowed the opportunity to have representation of his choice.
- d. it acted properly in terminating Mr. Edwards' contract of employment and asked that the Tribunal finds that the termination of Mr. Edwards was justified.

THE AGGRIEVED WORKER'S CASE:

15. Mr. Edwards was the sole witness called, and he testified that he first worked with Guardsman Limited in 1982. He left that Company and moved on to a better job, but he could not recall exactly why. He later worked with Dual Security Limited in 1997, which merged with Marksman in 2001. He again left Marksman, and in 2012, he applied to the Guardsman Group of Companies, was successful in securing employment, and was assigned to Marksman.
16. It is Mr. Edwards' evidence that on or around January 27 or 28, 2016, whilst preparing for work, he received a call from Mr. Williams, his Supervisor who told him to stop working and report to the base for a disciplinary hearing. No reason was provided by Mr. Williams for him to stop working and to attend the disciplinary hearing.
17. The hearing was held on February 3, 2016, and the persons present were Major Goulbourne, Operations Manager; Mr. Griffith Williams, Area Manager; and Ms. Althea Williams, Human Resource Manager.
18. It is Mr. Edwards' evidence that the Notice of Hearing was given to him on the morning of the hearing to sign and he was then asked if he had a representative, to which he replied no. Mr. Edwards testified that he requested time to get a representative but was denied that opportunity



by Major Goulbourne. He was asked to leave the room, recalled and told by Major Goulbourne that he was fired. Mr. Edwards testified that the hearing lasted about five (5) minutes. The details of the charges are that on Wednesday, January 27, 2016, "*at about 0500 hours Security Contractor Robert Edwards hand over his service revolver and ammunition to Security Contractor James Harvey and left the location without being relief.*" The footnote on the said Notice of Hearing states, "*You are allowed to bring a representative to the hearing with you.*"

19. Mr. Edwards' evidence is that he was relieved by Mr. James Harvey at 7:00 a.m. He handed over the firearm and ammunition to Mr. Harvey, who was his relief. He (Edwards) stated that Mr. Harvey did a double shift, having worked as an unarmed guard in the night. Mr. Edwards testified that they do not have a supervisor in the "bush" and hence, knowing what the handing over and taking over order is, applied same. Mr. Edwards admitted that though there is a procedure in the handing over of firearms, the Company's operations are based on custom and practice. He further stated that Mr. Harvey and himself both used the same firearm and the same permit.
20. Mr. Edwards testified that he did not receive a termination letter and has not been paid for his vacation leave or overtime worked.
21. Mr. Edwards stated that he applied for employment at Guardsman in December 2021. He successfully completed the interview and was assigned to Marksman, where he was reinstated in the said position as an armed guard with the same contract number.

"January 04, 2021

*Mr. Robert Edwards
06 Sandy Park Road
Liguanea*

Dear Mr Edwards



RE: Reinstatement of Contract #15612

This letter serves to confirm that as at today, December 28, 2021, you have been reinstated as a Security Contractor.

Your contract number remains 15612

We take this opportunity to welcome you back to the company and wish your time will be a productive one.

Please be guided accordingly.

Regards.

Yours sincerely,
Marksman Limited

Alric Russell
HR Shared Services Team Lead"

He stated that he worked with Milex Security from 2019 - 2021.

22. The Aggrieved Worker contended that:

1. his services were terminated by Marksman without any offence committed.
2. his termination was devoid of the basic principles of the Labour Relations Code and the principles of natural justice.
3. the appeal requested was not provided.
4. no offence was committed by him (Mr. Edwards) as he was reinstated in December 2021 in the said capacity as an Armed Guard. Since February 2023, he has not been assigned duties.

THE TRIBUNAL'S ANALYSIS AND FINDINGS:

23. The Tribunal, in its deliberation, seeks to determine the following:

1. Whether an Employer/Employee relationship exists between Marksman and Mr. Edwards?
2. Whether Mr. Edwards breached the firearm policy of Marksman and the Firearm Licensing Authority?
3. Whether he abandoned his post?
4. Was the termination of Mr. Edwards in accordance with the provisions of the Labour Relations Code?



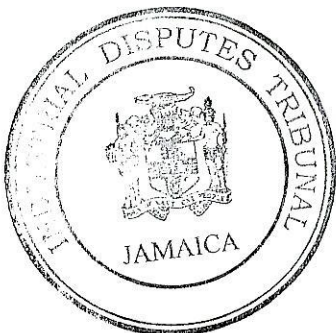
Whether an Employer/Employee relationship exists between Marksman and Mr. Edwards?

24. The Tribunal deems the relationship between Marksman and Mr. Robert Edwards as a critical issue to address at the outset. In order to identify the status of the relationship, the Tribunal refers to Section 2 of the Labour Relations and Industrial Act, which defines a worker:

““worker” means an individual who has entered into or works or normally works (or where the employment has ceased, worked) under a contract, however described, in circumstances where that individual works under the direction, supervision and control of the employer regarding hours of work, nature of work, management of discipline and such other conditions as are similar to those which apply to an employee.”

25. The Company refers to its Security Guards as sub-contractors. This creates a relationship for Contract for Service and not an employer/employee relationship. The difference between the two is a matter of mixed law and facts. In the case involving the **NHT and Marksman [2022] JMRC 1**, Batts, J. argued that one could apply the 'multiple factor test' which would examine: (a) whether the worker, in consideration of a wage or other remuneration, would provide his own tools in the performance of his service; (b) if he is subject to control by the employer in the performance of his duties; and (c) whether the other provisions of his contract are consistent with a contract of service.

26. The evidence shows that Mr. Edwards operated under the following guidelines that define a worker:



- 1) He was provided by Marksman with the firearm as the tool to be used in the performance of his duties.
- 2) He operated under instructions from the Supervisor.
- 3) His work time was regulated to include days off.
- 4) He was subjected to disciplinary measures.
- 5) He was supplied with the Company's uniform and Employee number.

27. When considering the above, the Tribunal has concluded that Mr. Robert Edwards was subjected to the supervision, direction and control of Marksman as it applies to an employee working under a contract of service under an employer/employee relationship and not a contractor relationship, as Marksman contended.

Whether Mr. Edwards breached the firearm policy of Marksman?

28. Mr. Edwards' termination letter was submitted into evidence. It outlined breaches of Clause 18b of his contract of employment and Section 27 of the Rules and Regulations of the Company, which resulted in his termination. Clause 18b states that *"for misuse of a firearm, including but not limited to parting with the firearm or carrying out any criminal or illegal activities"*. Section 27 of the Company's policy speaks to the following: *"Once a Sub Contractor is on location, he/she shall not leave his/her location, unless:- (a) properly relieved, or (b) with permission from the appropriate Contractor's representative, and or (c) it is done pursuant to the discharge of his/her duties under his/her sub-contract."*
29. Based on the evidence presented, there were established written policies at Marksman as it relates to the handing over of his assigned firearm to an unauthorized Security Contractor. The policy was that a Supervisor should be present at the change of the shift to receive the firearm, permit and ammunition to hand over to the relief guard. Mr. Edwards in his submission stated that the supervisors were consistently never on time. Mr. Edwards, when asked the following questions by Mr. Duncan had this to say:
- "Q: How late does he come from time to time?*
A: Sometimes 9:00, sometimes 10:00"
30. Mr. Edwards further stated that, *"we don't have a supervisor in the bush"* and therefore the custom and practice have been to hand over the firearm and ammunition to the relief Security Guard. The unchallenged testimony of Mr. Edwards is that: (a) the Company is aware of this practice; (b) Mr. Harvey would have been the armed relief guard at 7:00 a.m., having completed the earlier shift as an unarmed guard; (c) he and Mr. Harvey shared the same firearm and permit.
31. The Company provided no evidence, despite several requests, to verify whether in fact, there is multiple use of the same permit. Further, no evidence was led by the Company to confirm whether the Supervisor was present on location at 7:00 a.m. to receive the firearm and ammunition from Mr. Edwards, consistent with their policy, also the custom and practice outlined by Mr. Edwards were never challenged.



32. While the relevant policy speaks to the 'misuse' of a firearm, there is no evidence that Mr. Edwards actually misused the firearm, as stated in his termination letter. *"Misuse", according to Oxford Dictionary, is "to use something in the wrong way, or for the wrong purpose"*. This was not the case with respect to Mr. Edwards. The Tribunal is therefore of the view that the Company failed to prove the misuse of the firearm by Mr. Edwards as *one of the grounds* upon which he was terminated.

Whether he abandoned his post?

33. Mr. Edwards, when asked the following questions by Mr. Small in Cross Examination, had the following to say:

Q: So therefore, when you left you left without authorization?

A: I am relieved.

Q: When you left and decided that you were leaving the job you left without authorization. Yes or no Mr. Edwards?

A: No. I am relieved.

Q: So you the authority to determine when you are relieved?

A: You said that, sir.

Q: I thought that was a supervisory responsibility.

A: Sir, we don't have a supervisor in the bush. We know the handing over and taking over order."

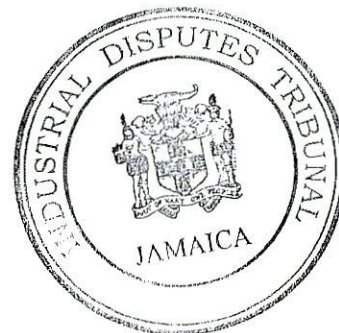


34. The Company's policy was that a Supervisor should be at the change of the shift to receive the gun and permit to hand over to the relief guard. It is unchallenged evidence that no supervisor was present at the time of the change of shift, and Mr. Edwards handed over the firearm and ammunition to Mr. Harvey and left the location. In the absence of a supervisor at the end of the shift, the Company has accused Mr. Edwards of abandoning his location/post.
35. Neither of these circumstances is pertinent to this case. The Tribunal accepted the fact that Mr. Edwards considered himself properly relieved, as Mr. James Harvey was the designated armed relief guard that morning and was on location. The notion of an abandonment of location/post is therefore spurious at best.

36. As it relates to the time that Mr. Edwards left the site, the Tribunal has accepted the evidence of Mr. Edwards. Mr. Harvey was the only person who could confirm the time that Mr. Edwards left the location, as the Supervisor was not present. It is important to note that Mr. Harvey was not brought into the disciplinary hearing to confirm or deny the accusation that Mr. Edwards left the site at 5:00 a.m. Neither the Supervisor nor Mr. Harvey were brought to the Tribunal to give evidence in this regard.

Was the termination of Mr. Edwards in accordance with the provisions of the Labour Relations Code and the rules of natural justice?

37. The Tribunal will focus on the procedure adapted by the Company in terminating Mr. Edwards' contract of employment. Dismissals of this nature are replete with the emphasis by the Courts that the employer is obliged to be guided by the Labour Relations Code.
38. Despite Mr. Edwards' testimony that he received and signed the Notice to attend the disciplinary hearing on the morning of Wednesday, February 3, 2016, the evidence confirms that the Notice of Hearing was in fact signed and dated by him on Friday, January 29, 2016. He would only have been given five (5) days to prepare his defense, which included Saturday and Sunday. The Tribunal finds the time given to Mr. Edwards was inadequate to prepare and consult his representative to provide real and effective assistance.
39. It is trite law that where a person is being charged for any breach of the terms and conditions of his/her employment, the principles of natural justice require that the person should be given the opportunity to defend himself/herself. Especially in circumstances where certain interests and or rights may be adversely affected by the decision maker.
40. Major Goulbourne described what transpired at the hearing and stated that Mr. Edwards was given the opportunity to speak and he presented no defense. Mr. Edwards, in his evidence, however, stated, *"I asked for time out to get a representative and they tell me to step outside. They called me back in less than five minutes and said you are fired"*.



41. The Tribunal finds that, notwithstanding the fact that Mr. Edwards requested time to get a representative, he was denied the opportunity. The Company on the other hand, acted hastily in terminating the services of Mr. Edwards.

42. Paragraph 22 of the Labour Relations Code states:

"Disciplinary Procedure

- (i) Disciplinary Procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:*
 - (a) ...;*
 - (b) ...;*
 - (c) give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
 - (d) provide for a right of appeal, wherever practicable, to a level of management not previously involved;*
 - (e) be simple and rapid in operation"*

43. The Tribunal finds that Paragraph 22(i) (c) was not fully complied with, and although Mr. Edwards was given the opportunity to bring a representative to the hearing, he was not afforded the right to state his case. Furthermore, when he requested time to get a representative, he was denied same. Mr. Edwards' letter of dismissal did not advise him of his right to an appeal as stated in Paragraph 22(i) (d) of the Labour Relations Code. Major Goulborne, in cross examination, had this to say:

Q: Was he given the right of an appeal

A: No.

44. The Tribunal concludes that Marksman terminated Mr. Edwards on February 3, 2016 and reinstated him in December 2021. In light of the above, the Tribunal concludes that Mr. Edwards is still an employee of Marksman.



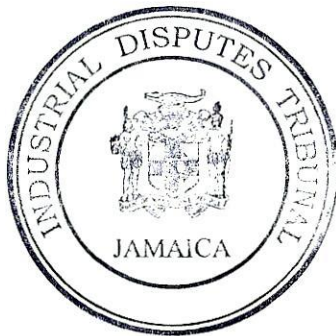
45. The Tribunal notes that Mr. Edwards mitigated his loss as he worked with Milex Security from 2019 to 2021.

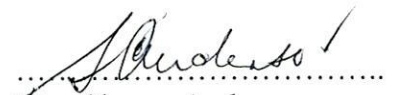
46. Based on the oral and written evidence, the Tribunal concludes that Mr. Robert Edwards' termination was unjustified.

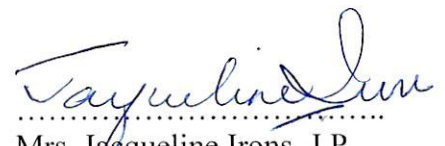
THE AWARD:


47. The Tribunal awards Mr. Roberts Edwards Two Million Three Hundred Thousand Dollars (\$2,300,000.00) as compensation.

DATED THIS 11 DAY OF MAY, 2024





.....
Mrs. Sharon Anderson
Chairman


.....
Mrs. Jacqueline Irons, J.P.
Member


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

Witness


.....
Mr. Mario Ling
Acting Secretary to the Division