

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 37/2012

SETTLEMENT OF DISPUTE

BETWEEN

**THE MINISTRY OF HEALTH & MINISTRY OF FINANCE &
PLANNING**

AND

**THE ASSOCIATION OF GOVERNMENT MEDICAL
CONSULTANTS**

AND THE

AWARD

I.D.T. DIVISION

MR. NORMAN WRIGHT, Q.C.	-	CHAIRMAN
MR. RION HALL	-	MEMBER
MR. D. TREVOR McNISH	-	MEMBER

JULY 22, 2016

IDT 37/2012

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

THE MINISTRY OF HEALTH & THE MINISTRY OF FINANCE &
PLANNING
(MOH & MOF)

AND

THE ASSOCIATION OF GOVERNMENT MEDICAL CONSULTANTS
(AGMC)

REFERENCE:

By letter dated December 10, 2012 and duly amended by letters dated December 21, 2012 and May 13, 2014, the Honourable Minister of Labour and Social Security pursuant to Section 9 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 the Ministry of Health and the Ministry of Finance and Planning on the one hand, and the Association of Government Medical Consultants employed to the Ministry of Health on the other hand over the Association’s claim for

payment of Emergency Duty Allowance and Incentive Allowance for the full duration of Leave.”

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 **Ministries** were represented by:

Miss Carlene Larmond	-	Attorney-at-Law
Miss Fay Case	-	Chief Industrial Relations Officer (MOF)
Miss Sonia Smith	-	Director, IR & Staff Welfare (MOH)

The **Association** was represented by

Mr. Patrick Foster, Q.C	-	Attorney- at- Law
Miss Ayana Thomas	-	Attorney-at -Law

In attendance were:

Dr. Konrad Lawson	-	President, Assn of Govt. Medical Consul.
Dr. Pauline Weir	-	Secretary
Dr. Cecil Batchelor	-	Executive Member

SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties and oral submissions made during sixteen (16) sittings, from September 5. 2013, to July 22, 2016.

BACKGROUND TO THE DISPUTE:

The Ministry of Health (MOH) and the Ministry of Finance and Planning (MOFP), act for the Government in this dispute. The MOH makes up the public health system and is responsible for health care delivery across Jamaica. They have the overall responsibility for developing the Government's fiscal and economic policy framework and collecting and allocating public revenues.

The Association of Government Medical Consultants (AGMC) is an Association that represents the Medical Consultants-Doctors in the public health care system, i.e. All Consultants classified as MDG/MO 4-8 employed by the MOH, Regional Health Authorities, the UHWI and all and any other Government Health Agencies.

The genesis of this dispute occurred after the Government of Jamaica took the decision to stop the payments of the Emergency Duty Allowance to the Medical Consultants, for leave of absence in excess of twenty (20) days. This was done by way of letter dated November 17, 2008, in response to a query by the Southern Regional Health Authority, seeking advice as to how the Emergency Duty Allowance should be treated and paid to the said Consultants, the 20 days limit having been duly implemented without consultation with the AGMC. The letter stated:

*“This is in response to your memorandum seeking advice on the treatment of the **On-Call/Emergency Duty Allowance** paid to medical consultants whilst on vacation and study leave, please be advised that the allowance should be paid for the first twenty working days of paid leave.”*

The AGMC contended that there was no such restriction on the payments with regards to any time or type of leave as established under signed Heads of Agreement between both parties and had continued uninterrupted as a fixed allowance, to all Consultants, by virtue of their office and irrespective of their place of work or the number of hours worked. The allowance constitutes a substantial and integral part of the Consultants' salary and when withdrawn while on leave (in excess of 20 days) results in financial hardship on the Consultants affected.

The Government on the other hand, contended that an error was made in 1996 on the application of the IDT's Award to the Junior Doctors, as the Award was specific to that body alone and did not include the AGMC. Furthermore, the flat rate of the Emergency Duty Allowance, is payable to the Consultants for being available and on call. If the Consultant is on leave he/she is not available and accordingly not on call.

The matter was brought under correspondence by the AGMC to the relevant Ministries and failing a settlement, was duly referred to the Ministry of Labour & Social Security (MLSS), for conciliation. Following the conciliatory meetings, the parties were still at odds and the Minister of Labour and Social Security, by letter dated December 10, 2012, referred the matter as a dispute under Section 9, of the Labour Relations & Industrial Disputes Act (LRIDA), to the Industrial Disputes Tribunal (IDT).

When the matter was called before the IDT, the parties on two occasions disagreed with the wording of the Terms of Reference, which had to be returned to the MLSS for amendment and agreement was achieved by way of the Minister's letter of May 13, 2014. Further, lengthy delays were experienced in the conclusion of the sittings due to requests for the dispute to be again discussed at the local level, illness of the parties and other urgent obligations on the part of the Attorneys involved.

Subsequent to the finalization and agreement to the Terms of Reference the parties informed the Tribunal that the dispute was centered around the Emergency Duty Allowance. Consequently, no evidence was led or submissions made in respect to the Incentive Allowance portion of the Terms of Reference.

THE ASSOCIATION OF MEDICAL CONSULTANTS' CASE:

The Association contends, that the decision to discontinue the payment of Emergency Duty Allowance to the Consultants after the completion of 20 days leave, was unfair, unreasonable and unconscionable and made submissions and adduced evidence in support, as follows:

1. The Association contends that over the past few years the Ministry of Health and the Regional Health Authorities have unilaterally refused to compensate Consultants, for Emergency Duty Allowance for the full duration leave of absence. On October 3, 2012, the Consultants along with their Trade Union representative, attended a meeting at the Ministry of Labour. At the meeting, the Ministry of Finance and Public Service and Ministry of Health representatives, stated that the Emergency Duty Allowance is only paid for vacation leave that is of 20 days or less duration.
2. That no such restrictions on payments with regard to the time and type of leave taken previously, existed under the signed Heads of Agreement between the parties, and in fact, the Consultants were paid Emergency Duty Allowance for the full duration of all leave taken as per the Junior Doctors Special Industrial Disputes Tribunal Award of 1996. Payments to Consultants for the full duration of all leave taken continued until approximately 2007, when it was unilaterally changed without consultation with the Association to a payment limit of 20 days leave of absence.
3. That a fixed amount of Emergency Duty Allowance payment to Consultants continued, even when the fixed Emergency Duty payments to Junior Doctors was discontinued and changed to an hourly Rostered payment rate after the 1996 IDT Award. No such change was made to the Consultants' Emergency Duty Allowance payment and it continued to be paid as a fixed allowance to all Consultants, by virtue of their office and irrespective of their place of work or hours worked.
4. That the Emergency Duty Allowance constitutes a substantial and integral part of the Consultants' salary remuneration and when withdrawn while on leave, results in financial hardship to the affected Consultants.
5. That in letter dated July 13, 2012, the Association expressed these concerns to the Honourable Mr. Horace Dalley, Minister without Portfolio in the Ministry of Finance and Planning. The letter states inter alia:

“As part of our Social and Economic Benefits we would like the re-in-statement of the pay for Emergency Duty Allowance for the full period of all leave as granted by the IDT ruling of May 21st, 1995. This award was granted to the JMDA and the AGMC was paid by default judgment.

However, this award was erroneously discontinued by the Ministry of Health.”

6. That the relevant Ministries have unilaterally withdrawn funds from the salaries of Consultants who were paid while on full vacation and study leave. This was done without having consultation with the Consultants affected by this decision or affording them an opportunity to be heard. The Association referred the matter to the Ministry of Finance and then to the Ministry of Labour and as mentioned above, a meeting to resolve the issue was held on October 3, 2012. The matter has now been referred to the IDT by the Ministry of Labour under cover of letter dated December 14, 2012.
7. That as can be seen from an examination of the relevant background, the Emergency Duty Allowance and Incentive Allowance were paid to all doctors for the full duration of leave taken both prior to and following the Award in *Junior Doctors' Association* Dispute referred to above.
8. That the members of the Association of Government Medical Consultants similarly received this allowance as is revealed from several Heads of Agreements dating back to November 1997. This is clear, based on both the *Junior Doctors'* decision and the subsequent implementation of the ruling in that decision in the various Heads of Agreements, that the Consultants have a right to receive compensation for Emergency Duty Allowance and the Junior Doctors, for Incentive Allowance for the full duration of leave taken.
9. That the Consultants have a legitimate expectation to receive the Emergency Duty Allowance while on leave having regard to the established practice of the Ministry of Health in granting this allowance for the full

duration of leave far in excess of 20 days. The unilateral and arbitrary removal of this right without proper consultation is unfair and contrary to the principles of fairness and natural justice.

10. That the Ministries' action in refusing payment for this allowance where leave taken exceeds 20 days, is contrary to the IDT ruling in the Junior Doctors' Dispute and to the established policy, and is in breach of the Heads of Agreement between the Association and the Ministry.
11. That the members of the Association of Government Medical Consultants have consistently been receiving Emergency Duty allowance for the full duration of all types of leave following the Award in the *Junior Doctors'* case, and same has been implemented and applied under several Heads of Agreements between the Government of Jamaica and the Association.
12. That the Ministries' refusal to compensate the Consultants , for the full duration of leave taken in excess of 20 days, is in defiance of the ruling in the *Junior Doctors'* Award and is in breach of the several Heads of Agreements and the established policy to pay the Consultants this allowance. No policy changes having been implemented subsequent to this decision, it is submitted that this unilateral change without consultation is wrong and ultra vires. It unfairly deprives the Consultant Doctors of their legitimate expectation to receive Emergency Duty Allowance for the full duration of leave.
13. That on the evidence of Doctors Lawson, Weir and Batchelor, the Consultants by nature of their professional competence and experience, being designated leaders of the team, are charged with the responsibility of ensuring the provision of the best possible patient care with the resources at hand as they have ultimate responsibility for the care of patients. Therefore, it is a lack of understanding for anyone to suggest or imply that once a Consultant goes on leave, his roles and functions are "switched off." A clear understanding of the Consultants role and function support the realization that their functions, especially as team leaders, continue even though they are on leave.

14. That according to the evidence of Doctors Weir and Batchelor, the Emergency Duty Allowance paid to the Consultants, although so described, is not an Emergency Duty Allowance in the strictest sense, but an allowance that is intended to pay the Consultants a reasonable salary and in fact constitutes a substantial and integral part of the Consultants' salary. By their unilateral decision to pull the allowance after 20 days, what the Ministries were purporting to do, is to reduce the Consultants' salary after 20 days of leave and this is an unacceptable decision.
15. That the amount of Emergency Duty Allowance to be paid to each Consultant is arrived at by the process of negotiation between the negotiating teams of both the Ministries and the Association. The amount agreed on is fixed for the duration of the relevant Heads of Agreement. Therefore, it is unfair and unreasonable for the Ministry to have discontinued the payment after 20 days of leave, without consultation with the Association.

This dispute, in essence, is dealing with an industrial relations matter which determines how an employer should treat with an employee in circumstances where that employer wishes to change an element of the remuneration package of the employee.

16. That accordingly, the Ministries had an obligation to consult the Association prior to the discontinuance of the payment of the allowance after 20 days of leave and the Association had a legitimate expectation to be heard prior to the action being taken by the Ministry. The essence of legitimate expectation is that some substantive benefits, privilege or right, which an employee or other person is expected to enjoy, should not be taken away from that person except with proper consultation or a prior hearing; and this is the essence of it. You have a right; you have a privilege; you have a benefit, and based upon the practice between the parties, i.e the established practice - if I may use the technical term of some expressed statement, you should not take away that established practice unless you go through an agreed process.

17. That it is an indisputable fact that after the IDT Award in respect of the Junior Doctors in 1996, the Emergency Duty Allowance was paid to the Consultants for the full duration of any leave taken. This situation was altered in 2008 on the basis that it was inconsistent with Staff Order 6.7.11, which stipulates that '*Duty Allowance may be paid while on leave of absence for a period not exceeding 20 working days.*' It is submitted that the Emergency Duty Allowance is not the same as the "*Duty Allowance*" which is described and defined under the Staff Orders.
18. That the allowance is paid to the Consultants, irrespective of the place or the number of hours they work, and is in effect, a part of their salary which is merely used as a mechanism for paying them the additional salary described and devised as an "Emergency Duty Allowance." Consultant Doctors, given the nature and fundamental responsibility they have for patient care and administrative functions, still continue to carry out their duties and may be required to carry them out, even to a greater extent, when they are on leave. This decision is unfair, unreasonable and unconscionable, when you consider that this allowance is more than fifty percent of the Consultant's remuneration. The effect of this decision, in real and practical terms, was to reduce the Consultants' salary by more than fifty percent, after twenty days of being on leave.

THE MINISTRY OF HEALTH AND MINISTRY OF FINANCE AND PLANNING'S CASE:

The Ministries of Health and Finance and Planning contend that the decision to discontinue the payment of the Emergency Duty Allowance to the Consultants, is justified and have made submissions and adduced evidence as follows:-

19. That in 1996, the Government took the decision to roll the Emergency Duty Allowance payable to the Junior Doctors into basic salary:

In acknowledgment of the IDTs findings “....that the Emergency Duty Allowance paid to the Doctors is different in nature from the ordinary duty allowance and is paid in recognition of the inherent characteristics of the Junior Doctors function and responsibilities, and not as compensation for a particular number of hours worked.”

20. That the roll-in led to a change in the pay arrangements to the Junior Doctors (MDG/MO 1-111), Interns 1-11 and Locum Interns employed by the Government of Jamaica. The 1996 HOA (Appendix 5) for Junior Doctors stated that the flat rate of the On-Call/Emergency Duty Allowance was included in the basic salary from April 1, 1996. The details of payment were outlined in the Memorandum Reference No. C18^{vi} dated October 14, 1997, issued from the Compensation Unit (Appendix 6).
21. That in light of the above change, an adjustment had to be made in order to maintain pay differentials. Additionally, a newly computed and re-titled allowance - On Call/Emergency Duty Allowance - was established for the Medical Consultants. The computation was based on a percentage above the midpoint of the MDG/MO 3 hourly rate, which was already adjusted to include the flat rate portion of the Junior Doctors Emergency Duty Allowance. The established on-call/emergency duty allowance, was to provide for the additional hours which the Consultants worked, but for which they were not otherwise compensated and in recognition of the fact that they were required to be on call to respond to emergencies.
22. That this principle for the payment of the Emergency Duty Allowance was enunciated by the then Chief Medical Officer, Dr. Barrington Wint, in his memorandum dated 7th October 1992 (paragraph 4) to the then Minister of Health and Permanent Secretary, which made a case for the extension of this allowance to the Medical Consultants in Head Office (appendix 7). He carefully outlined the reasons why they were on call.

23. That, included among other things were, Primary Health Care and Secondary Health Care in support of all field units, Epidemic Control activities, quarantine services to visit the Airport and structures, the seaports with respect to the prevention of the importation of disease and the Emergency Medical Services which are frequently to support serious traffic accidents, etc. in order to coordinate assistance/resources from several institutions to deal effectively with pay problems that may arise. The role of Medical Consultants in hospitals is evident in every day operations, as they are responsible for the management of patient care. These activities cannot be carried out by the officer if he/she is on periods of extended leave.
24. That conversely, if the Medical Consultant is on his or her period of absence, whether for rejuvenation, study, health related reasons or for whatever cause, then that Medical Consultant would not be available to take calls. Financial prudence dictates that if the Medical Consultant is not available to take calls, then he or she ought not to be compensated for services that cannot be rendered.
25. That the Government of Jamaica, as responsible stewards of the Jamaican people, has the responsibility to be fiscally prudent in the discharge of its mandate; particularly within the context of our current economic realities. It should be noted that the payment of the Emergency Duty Allowance to Medical Consultants for extended periods of leave, will result in increased costs that will impact the wage bill and place in jeopardy, the Extended Fund Facility being sought from the International Monetary Fund at this time and will also not be in the National Interest. We therefore respectfully request that the Tribunal deny the request of the Association of Government Medical Consultants to be paid this allowance during periods of extended leave.
26. That the contention by the Association that they had a legitimate expectation to be consulted or heard before the change in the payment of the Emergency Duty allowance, when the Consultants are on leave fails for a number reasons:

- (a) There is no unequivocal assurance, whether by means of an expressed promise or an established practice given to the Association, that it will embark upon consultation before it changes an existing substantial policy, was given to the Association;
- (b) no promise, no previous promise, no previous practice of notice or consultation or established policy substantially affecting any person or group.
- (c) no promise or a practice of present and future substantive policy.

There is no evidential basis on which to conclude that there can be any substantive legitimate expectation on the part of the Association, as there is no authoritative representation by the ministries of a policy to pay Emergency Duty Allowance to Consultants, during the full duration of leave.

27. There is no dispute that the Emergency Duty Allowance had been a feature of the remuneration package to Medical Consultants as contained in various Heads of Agreement. We have seen Heads of Agreements which go as far back as 1987. But that is not in issue; the fact that it is in a package is not the issue; the issue is whether there is an established practice of paying it for the full duration of leave for that extensive period. What has come out in the evidence before the Tribunal, is that the payment of the Emergency Duty Allowance was not being treated uniformly by the Regional Health Authorities. By the letter dated October 29, 2008, Miss Sonia Smith who was then director of Human Resource Management and Industrial Relations, indicated as such, in her letter Exhibit viii.
28. On the evidence before the Tribunal therefore, the Ministries submit that it cannot be said with any certainty, or with as much certainty as the AGMC posits, that the payment of the allowance, which on the evidence was not uniformly applied, would constitute a specific undertaking, directed at a particular individual or group, by which the relevant policy's continuance is

assured. The Ministries submit that on the evidence before the Tribunal, one cannot conclude that the policy is settled and established in practice, and for that further reason, we submit that there can be no substantive legitimate expectation.

29. That in a nutshell, in relation to substantive legitimate expectation, we believe that we can show the Tribunal on the evidence, that there was no authoritative representation in relation to the policy and even if the Tribunal were to disagree with us that there is some authoritative representation, we are saying that there is no established practice, and the very fact that the payment was not being uniformly applied or approached across the region, is evidence that there was no established and settled practice in relation to the Emergency Duty Allowance or how it is paid. Even if the Tribunal were to accept that there is an existing substantive policy, there is no evidence coming forward from the Consultants, that there was any expressed promise made or any established practice of the Ministries, that they would give notice or embark upon consultation, before changing the policy.
30. That clearly, there was an established practice to consult on the scope of Heads of Agreements whenever those came up for consideration. That is not in dispute. In keeping with that policy or practice to consult, the sums for the Emergency Duty Allowance and the formula for its computation would have been arrived at, and the fact that it is a flat rate, would have been established. But it is my respectful submission, that these all relate to the quantum of the Emergency Duty Allowance. There is no dispute that there is a practice of consultation in determining the amount of the Emergency Duty Allowance. But none of those factors have to do with the extent to which the Emergency Duty Allowance is payable, and that is the issue before the Tribunal. In the absence of any evidence of an expressed promise or established practice that the Ministries would give notice or embark upon consultation in respect of such a policy, it is submitted that there is no paradigm procedural expectation.

31. Fiscal prudence dictates that the Ministries conduct themselves in a manner consistent with balancing all matters which promote and are not injurious to the national interest. Any policy which results in such an irrational position which requires a doctor to be paid “on-call/ Emergency Duty Allowance” while on study leave for 2 years; while on vacation leave for an extended or indeterminate period; but in all circumstances not on duty beyond a limited time, cannot be supported. And so, it is further submitted, that notwithstanding the existence of the 1996 Junior Doctors’ Award that this Tribunal, as constituted, may consider evidence before it and determine whether the principles outlined in that Award can properly be extended, or justifiably be extended to these circumstances, given the evidence before you. It is for those reasons that the Ministries would ask that the Tribunal refuse to determine the Terms of Reference in favour of the Consultants and to conclude that the Emergency Allowance is not payable for the full duration of leave.

FINDINGS/CONCLUSIONS:

On the evidence presented before this Tribunal the following facts are plainly clear:

32. After the Special Tribunal of the IDT Award 1996, the majority of the Consultants in the Ministry of Health were paid the Emergency Duty Allowance for the full duration of the relevant leave on which they proceeded. In 2008 an officer of the Ministry of Health observed that the payment of the allowance to the Consultants while they were on leave was not treated uniformly by the Regional Health Authorities and sought advice from the Ministry of Health.

The evidence of Miss Sonia Smith, Director of Industrial Relations and Staff Welfare, MOH in this regard is as follows:

Q: Now in that letter, Miss Smith, you say in paragraph 1 that the payment of the On-call Emergency Duty Allowance to Medical Consultants when they are on vacation or pre-retirement

leave is not treated uniformly by the Regional Health Authorities. Could you say why you would have made that observation in the letter.

A: Because in some institutions in the various regions the allowance was treated similar to the Duty Allowance that is outlined in the staff orders and in...

Duty Allowance that is outlined in the Staff Orders, while in others the Consultants were paid the full amount when they go on vacation leave regardless of the period.

Q: and so it is that which prompted you to seek the advice?

A: Yes because at the time there were at least two Consultants who would be proceeding on pre-retirement leave.

Q: at the time in your region?

A: In my region yes, and so to ensure that they were paid properly then I thought it was best to seek the advice.

Thereafter, in 2008, the payment of the said allowance for the full duration was discontinued and a number of the Consultants who had benefited from the payment for a period in excess of 20 days leave, had such payment deducted from their salaries. This, on the basis that the payment of this allowance should be consistent with the provisions of Staff Order 6.7.11.

33. It was established in the Junior Doctors' Award that the **“Emergency Duty Allowance paid to Doctors is different in nature from the ordinary duty allowance and is paid in recognition of the inherent characteristics of the Doctor’s functions and responsibilities and not as compensation for a number of hours worked.”** Taking into consideration the evidence in this dispute, which is somewhat similar to the Junior Doctors’ dispute, this Tribunal has no difficulty in coming to a similar finding. We therefore accept

the submission of the Association that the Emergency Duty Allowance paid to the Consultants, is distinct and separate and is not a “duty allowance” as described and defined in the Staff Oder 6.7.11. Therefore the stipulation that leave of absence be not paid for in excess of 20 days does not apply to the payment of Emergency Duty Allowance.

34. The Emergency Duty Allowance represents a significant portion of the Consultants remuneration calculated to be in excess of 50%. The question must be asked, why is this so? The answer lies in the evidence of Dr. Weir, Assistant Secretary, AGMC who gives a historical perspective of the purpose of the allowance.

Dr. Pauline Weir M.D., Programme Director, University of Technology and former Senior Medical Officer at the Kingston and St Andrew Corporation in her evidence said:

“The Government was unable to give increase basic salary because the doctors, nurses, everybody is in a special package and you would get exponentially more than that person. So if you pull one person out and give them a higher salary you have to give more salary to the persons that-I think it comes right up to... It is almost like if the Permanent Secretary gets more pay the Minister will have to get more, because the Ministers usually get a dollar more than the Permanent Secretaries. So the government was unable to do so and consequently we were put on this on-call allowance...”

Also, Dr. Batchelor, Senior Medical Officer, Consultant Surgeon at the Princess Margaret Hospital who explains it in simple and precise terms as follows:

“Emergency Duty Allowance was a contrivance to amplify take home salary of Medical Consultants.”

It is clear from the above that there is an element of salary in the Emergency Duty Allowance and as such, it cannot be treated like ordinary allowances that are paid to employees on an ad hoc basis where certain conditions are met. Again we find it convenient to adopt the reasoning of the Special Tribunal in the Junior Doctors Dispute, in concluding that the **Emergency Duty Allowance paid to the Consultants constitutes a substantial and integral part of their remuneration and it would be unfair and unreasonable to withdraw it whilst they are on leave.**

35. It is the contention of one party to this dispute, the employer, that to continue the payment of the Emergency Duty Allowance to the Consultants whilst they are on leave in excess of 20 days, would be tantamount to giving away money as the Consultants are not performing their duties then. However, the evidence of Dr. Cecil Batchelor and Dr. Konrad Lawson give a completely different understanding and perspective on this issue.

Dr. Konrad Lawson, Consultant Specialist Orthopedic Surgeon said in evidence that:

“Insofar as I remain the main person in charge of the patients admitted under my care, yes, I am still on call. I can be called when I am on leave for advice, for guidance and director.

...and if it is that my advice or intervention is required then they will call me and discuss things with me. From an administrative point of view...”

Q: Do you still have administrative responsibilities before the twenty days have passed while you are on vacation leave?

A: Administrative responsibilities to the patient?

Q: yes or to the hospital?

A: I would still have responsibilities to the hospital, and if it is that my advice or intervention is required then they will call me and discuss things with me. From an administrative point of view I have been called from the Senior Medical Officer's Office several times while I have been on vacation. Whether it has to do with direct medical care to the patients or administrative care I would still maintain some responsibility.

Dr. Cecil Batchelor, in support gave the following evidence:

Q: were you on call for the period you were on leave?

A: I could talk so the calls kept coming in. When my wife realized she took away the phone. They would call to say sorry to hear what happened doctor but they would still ask for advice.

Q: Were you on call for the period you were on sick leave? How often were you called?

A: When I got back my telephone someone called from the hospital everyday whether patient care or administrative issues. Perhaps because of the nature of my post. For years I was the only consultant there."

And interestingly enough while he was on leave he says senior resident was covering for him.

"She was still inexperienced in terms of administrative matters. She would take care of ward rounds. Doctors are trained to consult each other. She had 11 years training."

Dr. Weir's testimony also supports that of her colleagues in this regard where she explains that on one occasion she was abroad on study-leave and was recalled.

This evidence supports the position that the Consultants are on-call whilst they are on leave of absence and are not totally divorced from the patients, nor from administrative functions that they normally perform.

36. The Tribunal accepts the submission of Counsel for the Association that the essence of legitimate expectation in labour/management disputes must be looked at from the viewpoint of the employers conduct and treatment of the employee in implementing changes to a substantive benefit, privilege or right which the employee is expecting to retain. We will add that this is a benefit the Consultants have been enjoying so long that it has become a custom.

In our view, there can be no justification or good reason for the Ministry to have implemented changes to a benefit of which the Consultants have a legitimate expectation to be paid to them in the usual manner, without communication and prior consultation. The Labour Relations Code speaks as follows to this subject.

“3. Application:

Save where the Constitution provides otherwise, the code applies to all employers and all workers and organizations representing workers in determining their conduct one with the other, and industrial relations should be carried out within the spirit and intent of the code.”

PART V - COMMUNICATION AND CONSULTATION

“19. Communication and Consultation

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 with in the organization.”

“(b) Consultation

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

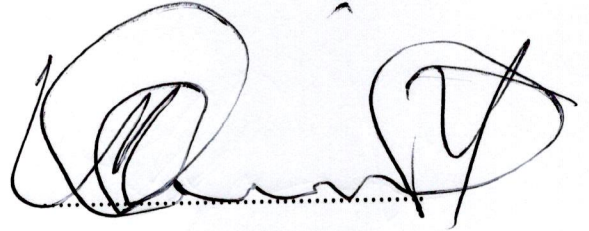
Accordingly, counsel for the Association has described the Ministries’ action in discontinuing payment of the Emergency Duty Allowance to the Consultants after 20 days of leave of absence and deducting amounts paid in excess from the salaries of those Consultants as **“unfair, unreasonable and unconscionable, when it is considered that the allowance is more than fifty percent of the Consultants remuneration.”** The Tribunal endorses the foregoing description of the Ministries’ action.

The Tribunal, having assessed the evidence in this dispute, taking into consideration the functions of the Medical Consultants’, the composition of the Emergency Duty Allowance and the undisputed fact that this group of medical personnel plays a very important role in the delivery of medical care which is extremely critical to the health of the nation, accordingly makes the following Award:-

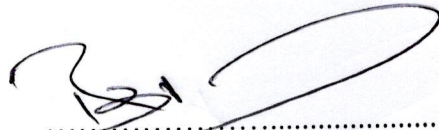
AWARD:

That the Emergency Duty Allowance be paid to the Medical Consultants for the full duration of leave.

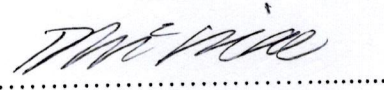
DATED THIS 22 DAY OF JULY, 2016



Mr. Norman Wright, Q.C
Chairman



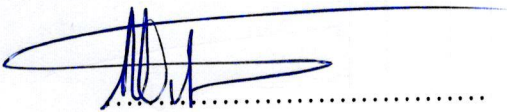
Mr. Rion Hall, JP.
Member



Mr. D. Trevor McNish
Member



Witness:



Sherene Watson
Secretary to the division