

**INDUSTRIAL DISPUTES TRIBUNAL**

**Dispute No.: IDT 1/2015**

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**SETTLEMENT OF DISPUTE**

**BETWEEN**

**MINT MANAGEMENT & FINANCE SERVICES LIMITED**

**AND**

**NICHOLAS ELLIOTT**

**AND THE**

***AWARD***

**I.D.T. DIVISION**

**MR. NORMAN WRIGHT, Q.C. - CHAIRMAN**

**MR. RION HALL - MEMBER**

**MR. D. TREVOR McNISH - MEMBER**

**MAY 4, 2016**

**IDT 1/2015**

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

MINT MANAGEMENT & FINANCE SERVICES LIMITED  
(THE COMPANY)

AND

NICHOLAS ELLIOTT  
(THE AGGRIEVED)

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**REFERENCE:**

By letter dated January 15, 2015 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 Nicholas Elliott on the one hand and Mint Management and Finance Services Limited on the other hand, over the termination of his 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:

- 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:

- Mr. T. Carl Thomas                        -        Attorney-at-Law

In attendance was:

- Miss Winsome Minott                    -        Managing Director

**Mr Nicholas Elliott** was represented by

- Mrs. Andrea Walters-Isaacs            -        Attorney -at - Law

In attendance was:

- Mr. Nicholas Elliott                      -        Aggrieved Worker

**SUBMISSIONS AND SITTINGS:**

Brief were submitted on behalf of both parties and oral submissions made during twelve (12) sittings, held between April 15, 2015 to February 19, 2016.

**BACKGROUND TO THE DISPUTE:**

Mr. Nicholas Elliott was employed to Mint Management and Finance Services Limited (MINT) on October 3, 2011 as an Accounting/Administrative Officer. Due to various alleged infractions of misconduct and breaches of the company's code of conduct, the Managing Director (MD) sought to dismiss him. Efforts were made to meet with him to determine a final position but he failed to attend any of the scheduled meetings.

Consequently, based on an alleged statement in a telephone conversation, that he would never return, it was taken that he had resigned. Mr. Elliott thereafter took the matter to the Ministry of Labour and Social Security. However, conciliation was not achieved, resulting in the matter being forwarded as a dispute to be determined and settled by the Tribunal.

**THE COMPANY'S CASE:**

The Company's case was presented by its Attorney, through four witnesses and supported by various exhibits and legal submissions.

It is the contention of the Company, that Mr. Elliott commenced working on October 3, 2011, in the capacity as an Accounting/Administrative Officer. He is reported to have been a good worker, who applied himself creditably; however, from the outset, it became clear that his inter-personal relations with his co-workers were poor and problematic.

The Company, through its Managing Director (MD), stated that Mr. Elliott satisfactorily completed his probation. However, within the first six months, she had received complaints from his Manager, (Jermaine Lawrence), who had recommended Mr. Elliott for the job. The complaints were about his performance and conduct. Mr. Lawrence requested that Mr. Elliott be removed from his department, after an incident in which Mr. Elliott was alleged to have punched at him. Consequent on this, she changed the reporting relationship and had Mr. Elliott starting to work through her. She found that during 2012, she had worked well with him but could detect that there was disharmony with his co-workers. No disciplinary action was taken, but Mr. Elliott was spoken to and requested to control his anger.

On January 10, 2014, Mr. Isaac Barrett and Mr. Elliott had a major altercation and the MD was brought into the picture. She invited both workers into her office to try to understand the issues. Mr. Barrett started to taunt Mr. Elliott who in return tried to launch an attack on Barrett, but was prevented from doing so by the intervention of the office Administrator, (Carmen Cornwall) who stepped in between them and took Barrett

outside. Mr. Elliott then took up a “paper punch” and made a threatening remark towards Barrett. Consequent on this incident, the Administrator was requested to conduct a full investigation and provide the MD with a report, to include any disciplinary action deemed necessary. The Administrator recommended two weeks suspension for Barrett (inclusive of penalty for a previous infraction) and five days for Mr. Elliott. However, the MD thereafter reduced the penalty to three and two days, respectively.

Mr. Elliott served the two days suspension; it was observed however, on his return, that his performance and personality had started to deteriorate. A meeting was held with him about this observation, but to no avail. The MD received a report that he was upset because he had not received a Christmas bonus. She then met with him on March 19, 2014, to advise him of the error, which was due to his absence from work, being on suspension and the absence of the Administration Manager, on his return. He became boisterous and angry to the point where she became fearful for her own safety. She was able to calm him down and he left the office in an amicable mood. Based on that experience however, she decided that it was best that his service be terminated and started to draft letters of termination for Mr. Elliott and other members of staff. On Friday, March 21, 2014, she went into the open office and announced, in the hearing of all the workers, the names of three of them with whom she wished to speak that afternoon. She held meetings with the other two members of staff, but when at approximately 5:00 p.m. she called for Mr. Elliott, she was advised that he had left. Mr. Elliott was not foretold what the meeting would have been about, but he knew that it was one to discuss issues concerning his behaviour and a 90 – 100% chance to dismiss him, unless there were indications of remorse and genuine indication for positive change.

She then called his cell-phone, but it went unanswered. She therefore called his mother at their residence and requested to speak with Mr. Elliott. But after being told to wait, his mother returned to say he could not be located. The MD then sent Mr. Elliott an e-mail requesting that they meet at 8:00 a.m. on the morning of March 24, 2014, at the Kingslyn Avenue, Branch Office. She had thought it best to hold the meeting away from the main office, to avoid any further outburst in the presence of the general staff-members. She

received an e-mail response on March, 23, 2014, stating “Noted, Ms. Minott”, which she took as acknowledgment of her request and his agreement to meet.

On March 24, 2014, she went to the Kingslyn Avenue office and waited up to about 9:00 a.m., but Mr. Elliott did not turn up or call. She left and went to the main office at Ripon Road, but did not see Mr. Elliott there at anytime for that day. She however, heard that he had called and had spoken to the Administration Manager, during which he had become abusive. She could not recall who had called, but she spoke with Mr. Elliott that afternoon and based on what she had been told, she asked him why it was necessary for him to abuse the Manager to which he replied in very disparaging words about the managers of the Company, stating that he would never return to MINT and if he did, she could spit on him. She took his statement to mean that he was finished with the Company. This telephone conversation was held on speaker phone, in her office, in the presence of the Administration Manager. However, on March 26, 2014, she received on her desk a certificate for sick leave for Mr. Elliott. She felt confused, as the certificate to her was now saying that Mr. Elliott was still employed. She therefore called him and sought to have a meeting with him to sort out the issues amicably, but he said he would only meet if he would receive what he was asking for. She then advised him that if that was how it had to go, then it could be settled in Court. Up to that point, she still had the draft letter of dismissal in her handbag.

The MD further informed the Tribunal, that she received a telephone call from the Administration Manager, on April 4, 2014, advising that Mr. Elliott had visited the office dressed in “street clothes” and saying that he had come for the letter, which she had left for him. He was on his way to the airport and if she caused him to miss his flight MINT would have to pay. She told the Administration Manager that the original letter of March 19, 2014, was no longer the one to be given to him but a new draft, which she would e-mail to her for delivery to him dated April 4, 2014. It was afterwards reported that Mr. Elliott became so disruptive, that the Administration Manager became so disoriented, that she could not even print the letter. The MD then called the Audit Manager and requested him to go and print the letter, but by that time Mr. Elliott had left, without the letter. She

was told that while she was still out of office, a call had come in for her from the Ministry of Labour & Social Security (MLSS), concerning the issue. She returned the call and was advised that Mr. Elliott had made a report to them and they wished to hear the Company's side, which she communicated and advised the MLSS's officer of what she had proposed to do. The MLSS officer advised her, that for completeness she was to forward copies of both letters to the Ministry and under registered mail to Mr. Elliott. She marked the letters "without prejudice", because some time before, she had been advised to use this medium when a transaction or intent was not completed. The letters to MLSS were delivered by bearer and after that, she had further discussions with a Miss Foster, of the Ministry, in which she had asked her to collect the keys for MINT's office from Mr. Elliott, but she said she was unable to. Up to the time of our hearing, the keys had not been returned.

The Company also provided evidence through its Audit Manager, Mr. Jermaine Lawrence, who shared a long time friendly relationship with Mr. Elliott and was the influence behind him being employed at MINT. Mr. Elliott supervised the Documents Department and reported directly to Lawrence, who was his first point of contact and the one responsible to do his Performance Appraisal Report. Lawrence gave evidence that from the first week of employment, the relationship between him and Mr. Elliott began to breakdown, as he resented being supervised and displayed an unacceptable attitude. He recalled Mr. Elliott calling him by telephone and "cussing him out" but he had overlooked it based on the fact they were firstly friends and it was he who had recommended Mr. Elliott for the job. When this crass behaviour continued, Lawrence said he reported the issues to the Administration Manager and when they persisted, he delivered a memorandum to Mr. Elliott, outlining his failing poor performance, along with a caution note and giving him an opportunity to respond. Mr. Elliott responded by coming to his desk with a clinched fist, pointing in his face in anger and threatening him. He further crushed up the memorandum and threw it in the rubbish bin. Lawrence then reported the incident to the Administration Manager, who promised to advise the MD. Sometime after this incident and based on no improvement in Mr. Elliott's behavioural attitude, he wrote the MD advising her that he could no longer work with Mr. Elliott.

Consequently, the MD took over the direct supervision of Mr. Elliott but he would still have to relate with him because the Document Department works closely with the Audit & Accounting Department.

Outside of the office, Mr. Elliott sent Lawrence various text messages with derogatory remarks against the MD and himself. Concerning the April 4, 2014, incident, he corroborated the evidence of the MD, that when he responded to her request to go to the assistance of the Administration Manager in the printing of the letter for Mr. Elliott; he did not see him at the office. He also observed that the Administration Manager did not look her usual self.

Under cross examination, he submitted that the memorandum and caution note were the only evaluation he had done on Mr. Elliott and that it was based on his personal experiences and complaints of various breakdowns, by other members of staff.

The Company called other witnesses in the form of:

- (a) The Administration Manager, whose evidence was that in her position she had to relate with Mr. Elliott for general office and human resources matters. She confirmed receiving the report from his Supervisor, requesting that Mr. Elliott no longer report to him. She also indicated that she never had a meeting with Mr. Elliott, during his employment, because of his poor behaviour. She described him as being aggressive and consequently, she tried to avoid him.

She testified that she was present in the office of the MD, at the meeting called following the incident between Mr. Elliott and Barrett, on June 19, 2012. She said it was she who had intervened to avoid an altercation between both men, after which she wrote a report to the MD, recommending the suspension for both employees. She considered the incident one of gross disrespect and had recommended two (2) weeks suspension for Barrett, (due to a previous incident) and five (5) days for Mr. Elliott. Following a meeting between the

MD and Mr. Elliott, the suspension sanctions were reduced to five (5) and two (2) days respectively, which she considered to have been too lenient, based on the employees' behaviour.

On Wednesday, 19<sup>th</sup>, March 2014, she was aware of a meeting between Mr. Elliott and the MD. Following the meeting she was called by the MD to her office and she observed that the MD was very upset and told her "it was over". On enquiring what was over, the MD told her what had transpired in her office with Mr. Elliott and then asked her to prepare a letter for him, which she did and gave it to the MD. On March 21, 2014, both Mr. Elliott and herself were at work and she was aware that he left at about 5:00 pm. On March 24, 2014, she did not see Mr. Elliott at work. However, on a visit to the MD's office, she became aware that he was on the phone with her, because the phone was on speaker and she recognized his voice. The MD was trying to have him come in to a meeting but he replied, "Not in twenty (20) years" and if "him eva come back a MINT yuh shud pit pon mi." He was also saying derogatory things about the Audit Manager.

The next time she saw Mr. Elliott, was on the morning of Friday, April 4, 2014, when he entered the office at around 9:30 am. She then gave evidence concerning what had transpired in total collaboration with the evidence of the MD, concerning his request for the letter and the difficulties she had printing it, because she felt pressured and nervous. She told Mr. Elliott of the difficulties she was having and he said "if Winsome eva meck mi mis mi flight she will haf fi pay." She then enquired if he was travelling and he replied "yes". He left the office without her knowledge and without the letter.

- (b) The Administrative Assistant, gave evidence of her personal interoffice conflict with Mr. Elliott as well as concurrence with the evidence of the Administration Manager, about the incidents of March 21, 2014 and April 4, 2014. She also said that on the evening of March 21, 2014, she was asked to

call Hawkeye Security Company and Mr. Elliott had enquired if it was because of him why this was being done. She told him she was unaware for what reason and he replied that whatever they were being called for is their business, because he was leaving at 5:00 p.m., which he did.

Overall and consequent on the forgoing, the Company submitted that Mr. Elliott resigned/abandoned his job and was not dismissed, although, based on the following facts, there was sufficient evidence to do so:

- His breach of the rules of conduct, forming a part of his terms of employment, resulting in several warnings and suspension.
- Disruptive and improper behaviour in the office.
- His refusal of several reasonable requests to attend meetings and to receive a fair hearing and his frustration of five efforts by the Company's Managing Director, for due process and his not reporting for work after his sick leave expired and was never prevented from resuming work.

The Company further contended that it has been vindicated from the claims of Mr. Elliott, by the evidence outlined and that the two main questions in the dispute had been clearly answered in its favour, whereby:

1. Was the employee terminated by the Company and was he denied due process and given sufficient opportunity to be heard in relation to the allegations of misconduct listed in the correspondence from the Company?  
and
2. Did the Employee resign as contended by the Company?

In answer to question 1, the Company contends that, up until April 9, 2014, when the employee, on his own admission, received the Registered Mail and had sight of the proposed letter of termination dated March 19, 2014, together with the one dated April 4, 2014, concerning the acceptance of his acts of resignation, he never received an official letter of termination of employment from the Company.

Allegations relating to the misconduct by Mr. Elliott and justifying termination of his employment are clearly set out in the proposed letter of March 19, 2014, duly supported by the evidence of the Company's four witnesses. These were clear grounds for dismissal, having regard especially to matters of concern regarding his work attitude and ethics.

The letter of March 19, 2014, was marked "Without Prejudice", boldly written at the top of the front page and placing reliance on the legal interpretation and common usage of the terminology given in "**MOZLEY & WHITELEY'S LAW DICTIONARY 7<sup>TH</sup> EDITION**", which states as follows:

*"to any matter in question means that a decision come to , or action taken is not to be held to affect such questions but to leave it open. Thus, when a Lawyer writes on behalf of a client to offer a compromise of a question in dispute, he guards himself from being supposed to make any admission beyond the mere fact of his willingness to compromise by stating that what he offers is without prejudice to any question in dispute."*

Therefore, the Company not having the privilege of meeting with Mr. Elliott did not have the opportunity to conclude it's intended position and as explained by the MD, dialogue could have changed her mind about the dismissal position albeit a 90% to 10% chance; as she *"always allow my staff enough discussion to explain how he would deal with the problems"* and *"my decision would be subject to what the person before me would say to convince me..."*

The evidence indicated that there was a breach of mutual trust by the employee and the development of fear on the part of the MD and staff members, because of the employee's disruptive behaviour and which, in itself, was grounds for dismissal. However, the letter of March 19, 2014, was not intended to be a final position and when it is read in conjunction with the efforts to have a meeting with the employee, it could not be said to be an effective letter of termination. Concerns with regard to the employee's conduct were itemized in this proposed letter of termination and would form the basis for further discussion.

Further, the subsequent clear course of conduct by Mr. Elliott, indicated his intention not to attend the proposed meetings with the MD, which efforts predates the receipt of both letters, by him.

Referring to the IDT's Award in the dispute of **National Commercial Bank JA Ltd. vs Peter Jennings (IDT /2013)** and in relation to **“the spirit and guidelines set out in the Code.....*With the burden on the Employer to establish that his dismissal of the employee was justifiable ....” and decide whether in all circumstances of the case dismissal of the employee was just, fair and reasonable.*”**

In this reference, it is the Company's case that the dissatisfaction with the employee's gross misconduct had not reached the stage where it could be unequivocally stated that he was dismissed by the Company, so that the application of the above test could be properly invoked.

Regarding “Procedural Fairness” and with continued reference to the case **(IDT 8/2013)- “the Tribunal must examine the procedural fairness on the part of the Company in its conduct with the employee.”** The Company was procedurally fair in its conduct with the employee, and by its actions, through the MD, clearly demonstrated the Company's view that Mr. Elliott had a right to be heard, hence the several attempts to have a meeting with him. The proposed meeting was never held and the proposed letter was never delivered to him until the 9<sup>th</sup> of April, 2104, by registered mail and again the markings of **“without prejudice”** is of critical importance.

The Company also posited that, in keeping with the guidance of the Section: 22- (1) (a) (b) (c) & (d) of the Labour Relations Code, (LRC) regarding the Rules of Natural Justice, there were no breaches and emphasised the following:

- ***That the accused has a right to be heard: - several attempts were made to hold meetings but Mr. Elliott failed to comply.***
- ***A man should not be a judge in his own cause:-no meetings were ever held.***

- ***A person accused or charged should know what case he has to meet:- the letter of March 19, 2014, outlined the charges, however no meeting was held, neither was the letter delivered until after the employee's resignation.***

While under cross-examination the MD said that she was not aware of the terms stated under Section 22 of the LRC, she also stated that her usual practice regarding labour disputes was always to invite the employees to a meeting and normally invite them to have representation.

Regarding question 2, the letter dealing with the employee's resignation is set out in the letter of April 4, 2014, which refers to the telephone conversation of March 24, 2014, during which the MD again requested a meeting and Mr. Elliott indicated inter alia and in no uncertain manner that ***"if me ever put back me foot in Mint oonu pit pon me"*** (***corroborated by the Administration Manager***).

Further confirmation of the employee's intention to resign is borne out by his conduct on April 4, 2014, indicating no intention to work, particularly:

- a) Arriving at work late, i.e. 9:20 am, dressed in unaccustomed attire,
- b) Indicating to the Administration Manager that he had a flight to catch and the consequences if he missed it.
- c) He made no attempt to sign the attendance register and was never stopped from doing so.
- d) Intimidating the Administration Manager, in seeking to obtain purported letter of termination. The manager in her evidence submitted that the employee caused her to become nervous and felt intimidated while trying to print the letter, thus causing delays.
- e) He left the office without obtaining the letter and never returned to work on April 4, 2014, or any time after.

The totality of the evidence suggests that Mr. Elliott was never denied due process and that there was no breach of natural justice in dealing with the circumstances of his case,

and that by his own words and conduct, he refused to resume working with the Company and thereby clearly demonstrated his resignation from work. There was no termination of employment as it had not yet reached that stage. The incidents of March 24, 2014, intervened and the behaviour of April 4, 2014, made it clear that he had no intention of returning to work, as he had a flight to catch. Therefore, based on the lies and half-truths stated by Mr. Elliott, the Company is asking the Tribunal to find that his evidence is not reliable and instead find that he resigned from the job.

**THE AGGRIEVED WORKER'S CASE:**

Counsel for the aggrieved worker submitted on his behalf by way of written submissions, verbal presentation and through his evidence that:

- 1) Mr. Nicholas Elliott was employed to MINT Management & Finance Services Ltd on October 3, 2011, in the capacity of an Accounting/Administrative Officer and reported to one Kevin Stone now (deceased), who was the Accounting Manager up to March 2012, when he left MINT and after that to Ms. Winsome Minott, the Managing Director (MD). He never reported to Mr. Jermaine Lawrence. He and Mr. Lawrence would check the work of junior staff but there were no direct reporting lines.
- 2) He recalled March 21, 2014. He did a full day's work and as normal he would not leave at exactly 5:00 pm. Working hours at MINT are: - Mondays – Wednesdays 8:00 am - 7:00 pm & Thursdays –Fridays 8:00 am – 5:00 pm.
- 3) On March 21, 2014, he left at 5:10 pm, because his walking partner was leaving. He was not aware of any request, by message, memorandum or other communication, about a meeting.
- 4) He got home at about 6:30 pm, because it was difficult to get a taxi. When he was opening the second gate to his home, his mother came out and asked, what had happened at the office for Ms. Minott to call and ask that you get in touch with the office?
- 5) At approximately 6:45 pm, he received a message on his cellular phone from the MD, requesting that he meet with her at the Kingslyn Avenue Office on Monday

- morning March 24, 2014, at 8:00 am. His reply on Sunday March 23, 2014, stated that the request was noted.
- 6) On Sunday, March 23, 2014, he became ill with a pre-existing condition.
  - 7) On Monday, March 24, 2014, he called MINT's office at Ripon Road and spoke with the Administration Manager, advising her that he was not well and could not come to work. She snickered as if she knew something and said that she would have to advise the Managing Director.
  - 8) Some time later in the day, he received a call from the MD. She was not in a good mood as she did not sound like the MD he knew for two (2) years before. She said:  
*“Nicholas, why the hell yu didn't come to work this morning? I was at Kingslyn waiting on you. I knew that you were going to do something like this. I intended to give you a termination letter on Friday but you ran off and left. I am going to deliver the letter to your house later this evening.”*
  - 9) He told the MD no, because he knew nothing about the letter, nor did anyone say anything about him having a meeting about termination. He told her he was not well and was just returning from the doctor. He had a medical certificate which he was going to send into the office on March 25, 2014. The MD then told him that even if he sent it in, it would be worthless because he did not work at MINT any longer. She still insisted that she was coming to his house anyway. He told her that no one would be there to take the letter because he was on his way home. She then said, **“Nick, why don't you do the honourable thing and resign? Isaac Barrett, Jermaine Campbell and Dianne have all left and have come back.”** He then replied that if he ever resigned from MINT he would never come back. He never resigned or offered to resign, walked off the job or invited her to spit on him or anything of that nature,.
  - 10) On Tuesday, March 25, 2014, the medical certificate was sent by bearer to the office of MINT.
  - 11) Some time after March 25, 2014, he checked his National Commercial Bank (NCB) account and saw a deposit made on March 21, 2014, of thirteen thousand and ninety-two (JA\$13092.24) dollars, twenty-four cents, which he could not

account for . His previous payday was on March 17, 2014, for the fortnight period ended March 14, 2014. On enquiring he discovered that the amount was deposited by MINT, representing salary for the period ending March 21, 2014. On verifying the amount he recognised that it was short in an amount of six hundred & ninety dollars & forty cents (JA\$690.40) as it appeared the Company did not take into account his sick days. On or about March 31, or April 1, 2014, he had a telephone conversation with the Administration Manager, on the issue, as up to that point while he found the salary payment unusual, he still considered himself employed at MINT.

- 12) He sent an e-mail to the office, at which point the Administration Manager advised him that the payment deposited to his account, was at the instructions of the MD and as such she would have to refer to her concerning the short payment. The MD subsequently called and advised him, that the reason he was not paid the full amount was that he no longer worked at MINT and she still wanted to give him the letter.
- 13) The MD also advised him that she had a “goodwill cheque” for him but she would not be giving it to him and if he wanted it he could take her to Court. He replied that he did not receive pay in lieu of vacation, pay in lieu notice and for his sick leave. She advised him that she could always dismiss him for gross misconduct based on the incident with Barrett in January, to which he enquired as to why he would be punished twice for the same incident, having served two days suspension for it. She replied, that she makes up the rules at MINT and nobody can change that. He advised her that she and MINT were not above the laws of Jamaica and those laws provide for what he was asking for and protected him.
- 14) After the above conversation, which was on April 1, 2014, communication ceased until he returned to work on April 4, 2014, the day after his sick leave ended. Employees are allowed to come to work casually dressed. He came in about 9:00 am, with his work bag over his shoulder. He was buzzed in and he proceeded to the cabinet where the admission book was located. Before he could reach it, the Administration Manager, came and took it up and returned to her cubicle with him following. After exchanging greetings, he told her that there was a lady

- sitting at his desk and enquired who she was. She replied in a jokingly/sarcastically manner, that she was his replacement. He then requested the letter of termination which the MD had for him, as she had promised on several times to deliver it to his home. She then asked him to take a seat outside in the waiting area.
- 15) After approximately one hour and forty-five minutes (1hr. 45 mins.) the Administration Manager came to him and advised that she was having problems with the printer. She would have to get in touch with the MD, which she did and he spoke with the MD, who apologised for his long wait but that she had the hard copies of the letter and she would have to have it picked up for delivery. He therefore returned to the waiting area, from where he had texted his mother to come back for him as he was no longer employed at MINT (as advised by the Admin. Manager & the MD).
  - 16) He confirmed that he did tell the Administration Manager that he had a “flight to catch” but it was a lie, done because he had waited long.
  - 17) After waiting approximately two (2) hours, he left and went to the Ministry of Labour and Social Security, where he met with an officer (Ms. Fay Foster), to discuss the happenings of the day. He gave her a summary of what had occurred between the period of March 3, 2014 and April 4, 2014. She then made a call to MINT and spoke with the Administration Manager in a conversation which he heard, because the phone was on speaker.
  - 18) He was asked, by Ms. Foster, to return home and await the receipt of the letters of termination. He received the letters by registered mail on April 9, 2014, one dated March 19, 2014 and the other April 4, 2014. He then took them to Myers, Fletcher and Gordon, who were his lawyers at that time. The penultimate paragraph of the letter of March 16, 2014, stated that it enclosed a BNS cheque in the amount of JA\$27,500 but he did not receive it.
  - 19) Regarding the evidences of Mr. Jermaine Lawrence, he recalled the incident of being issued a memorandum and taking it back to him and subsequently crushing it and throwing it in the rubbish bin. He disagreed that there was any disagreement between them . Likewise he related his version of the incident

- between himself and Isaac Barrett, in which he claimed he was acting in self defence and for which he was suspended for two (2) days. He also advised incidents between himself and other members of staff, Althea Sterling and Lamar Peart.
- 20) Prior to March 19, 2014, he never had any disciplinary hearing and he could not recall the meeting between March 14 -19, 2014, as referred to in the MD's evidence. However, he recalled a discussion in the car park at Campion College compound, when he and the MD were there on other company business. The MD had advised that she was advised that he was dissatisfied because he did not receive a bonus for the year ended December 2013. She then proposed an increase in his salary of J\$5,000. 00 in lieu of the bonus and for him to do extra work in the evenings.
- 21) He never received any instructions/communication of any form from anyone that he was to remain for a meeting on March 21, 2014, and he never asked the Administrative Assistant, if she was calling Hawkeye for him. He recalled saying that concerning a Miss Griffiths, who along with a probationer were being dismissed that day.
- 22) Concerning his change of attitude after the suspension, he agreed that due to one previous incident when he was asked to give back a day for holidays (Ash Wednesday & Good Friday) coupled with the suspension, he started to work exact hours and did no more overtime or extra time work.
- 23) Regarding, the keys, he had taken them to the Ministry of Labour and Social Security, but Miss Foster would not take them. He received a call from the Administration Manager requesting that he deliver them to Hawkeye, but he did not. On April 9, 2014, when he went to Myers Fletcher & Gordon, he gave the keys to his then Attorney (Gavin Goffe) and asked that they be sent to MINT, by bearer that day. He is not aware of what has happened to them since.
- 24) He never had any meeting on March 19, 2014, in the MD's office nor did he ever lift up any desk and have any altercation with her. In fact, he did not consider that the relationship between the MD and himself had changed/deteriorated and as such he was surprised when he learnt of his dismissal.

Counsel for the aggrieved worker, submitted that the Company's complaint surrounded inter-personal conduct and she was waiting to see the grounds for summarily dismissal, but could not find any conduct warranting dismissal, much more summary dismissal. There was no evidence of poor performance and only one of misconduct, (incident between Mr. Elliott/Barrett), for which they served penalties and which occurred in January of 2014. To seek to re-visit that issue in the April 4, 2014, second letter of termination, is entirely misconceived and cannot properly have any bearing on the determination as to whether or not Mr. Elliott's dismissal was justified.

There was clear unequivocal evidence that the Company intended to dismiss Mr. Elliott and there were two questions to be asked:

- Was the dismissal justified and
- Were the proper procedures followed?

There is no evidence that Mr. Elliott resigned and reference to his statement that about not ever returning to MINT were said in response to being asked to resign by the MD as others had done and returned. On the other hand, all evidence pointed to the MD, having already come to a firm and unequivocal decision to terminate Mr. Elliott's services on the evening of March 21, 2014, notwithstanding her assertion that there was a 10% possibility that he might have been able to persuade her to do otherwise, had the intended meeting of March 21, 2014 taken place. All systems were in place, whereby:

- The Termination letter was drafted and typed from March 19, 2014, two days prior.
- A lodgement was made to Mr. Elliott's account on the intended dismissal day, March 21, 2014, representing pay for the period worked from the last fortnight, ended March 15, 2014.
- Hawkeye Security was called, on the MD's own admission, because she had definite plans to terminate Mr. Elliott that day. In the letter of April 4, 2014, the MD stated: - ***"There should be no surprise that Mint Management took the decision to call Hawkeye Security on the Friday of your planned termination***

*because persons felt your explosive personality could result in injury to themselves or other staff members.”*

- In paragraph 2 of the said letter of April 4, 2014, the MD made her intentions unequivocally clear by stating that: - *“I confirm what you had heard; that I had asked to see you on, Friday 21<sup>st</sup> March 2014 to give you a termination letter and termination pay in spite of your gross misconduct.”*
- In the MD’s conversations with Mr. Elliott, subsequent to the afternoon of March 21, 2014, she confirmed time and time again, that she intended to terminate his services on that date.

In conclusion, the Tribunal is being asked to find that Mr. Elliott was in fact dismissed; that the dismissal was unjustifiable in all the circumstances of the case; that due process was not observed, that Mr. Elliott was not afforded the opportunity to state his case or be represented at any hearing. Mr. Elliott no longer requires reinstatement, as he now resides abroad and as such the Tribunal is being asked to look at Section 12 (5) (c) of the LRIDA as relief and make restitution from March 21, 2014, to date plus costs.

#### **TRIBUNAL’S FINDINGS:**

Mint Management & Finance Services Limited, is a small, operating company, which appears to function, on a” lassie faire”, approach to management style and with supreme decision making resting in the hands of the Managing Director. In this regard, evidence submitted indicate that while different levels of Management and Supervisors are in place, decisions for action, particularly as it affects staff welfare and discipline, are all referred to the MD for final ruling. Recommendations overturned or drastically reduced without any notation for the reasons for the changes.

There is evidence of undocumented incidents of indiscipline, leaving issues to be recalled, by countering word of mouth and inability to be sure of the truth and meetings of vital importance and value unrecorded. Consequently, we heard of inability to recall if and when a formal meeting was held or whether the issues were discussed in a car park.

Industrial relations are loosely practiced with little or no reliance on the provisions of the Labour Relations and Industrial Disputes Act (LRIDA) and the Labour Relations Code (LRC). In fact, the MD in cross examination admitted to be unaware of the terms stated under Section 22 of the Labour Relations Code, which provides for the establishment of procedures and the measures to be followed in disciplinary actions.

Prior to the current dispute, there were several breaches with varying disciplinary actions up to a suspension for two (2) days, for threatening a co-worker. There was verbal evidence of continuous misconduct despite being spoken to, including absence from work without communication. While the evidence provided indicate that Mr. Elliott was a good worker, his inter-personal relations with his co-workers was disruptive and offensive, with reported outbursts and resulting with it being suggested that he should seek assistance with anger management.

Based on the overall misconduct, a decision was taken on March 19, 2014, to dismiss Mr. Elliott. A draft letter of dismissal was done and on March 21, 2014, at about 5:00 p.m. the Managing Director sought to have a meeting to discuss and if necessary deliver the letter to Mr. Elliott, but he left without attending the meeting.

The Company contends that it did not breach the provisions of the LRC, or dismiss Mr. Elliott, as no meeting was held with him because he failed to meet with the MD after several requests by her to do so. The charges against him were outlined in the letter of March 19, 2014, and were scheduled to be discussed with him and to allow him to be accompanied by a representative of his choice and present his defence, but he left work the evening of March 21, 2014, without attending the meeting arranged to do so. Also, while the letter was written with the intention to dismiss him, based on her style, there was a 10% chance it may have been rescinded, based on how much remorse was shown and an indication of change of attitude. The new letter of April 4, 2014, was developed after the MD accepted Mr. Elliott's reported statement that, if he ever came back to Mint she should spit on him, as an indication that he had verbally resigned. Paragraph 2 of that letter also confirms the intended dismissal on March 21, 2014 and states as follows:

***“ I confirmed what you had heard; that I had ask to see you on Friday 21<sup>st</sup> March 2014 to give you a termination letter and termination pay in spite of your gross misconduct. However, your co-workers had at 5:02 p.m. said you had left hurriedly. They found it amusing that I tried to find you outside, but you were long gone.”***

On the other hand, the Tribunal is of the firm view that, apart from the breaches of the rule of natural justice, it is clear that the MD did dismiss Mr. Elliott. Based on the facts that not only was the letter of termination prepared prior to the aborted meeting but it is the evidence of the Administration Manager, that she was instructed to credit Mr. Elliott’s account at NCB, with salary for work done up to March 21, 2014, which from all indications, was not a normal pay-cycle. This was further strengthened by the failure to pay for the period of his sick leave and the evidence that this was due to him not being employed to MINT during that time.

It is very clear also that, there is sufficient evidence to show that cogent reasons existed to justify the dismissal of Mr. Elliott and that his behaviour among his co-workers including the MD, was disruptive, combative and led to fear and disunity. He appeared to have been unable to control/manage his anger and was prone to undesirable outbursts. However, while his actions greatly contributed to the ultimate separation from the Company and must be taken into account in this Award, for the above-mentioned failings to observe any of the process and procedure as set out in the LRIDA/LRC to preserve the rule of natural justice, we find the dismissal unjustified.

We also take note of the fact that, the employee did not receive payments for any outstanding vacation leave, the period of sick leave and pay in lieu of notice and acknowledging the plea not to be reinstated, we make the following Award in full and final settlement of this dispute.

**AWARD:**

The Tribunal finds that the termination of the contract of employment of Mr. Nicholas Elliott is unjustified and in keeping with Section 12 (5) (c) (ii) of the LRIDA Awards that Mint Management & Finance Services Limited, pay him twenty-six (26) weeks normal salary, at the current rate, for the position he occupied as at March 21, 2014, as full and final relief.

DATED THIS 4<sup>TH</sup> DAY OF MAY, 2016.



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

.....  
Mr. Rion Hall  
Member

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

Witness:

.....  
Gary Lediard  
Secretary to the Division