

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 18/2020

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## SETTLEMENT OF DISPUTE

BETWEEN

OPERADORA PALACE RESORT T/A MOON PALACE  
JAMAICA GRANDE

AND

MR. SEVERIN ALBA

*AWARD*

### I.D.T. DIVISION

MR. ERROL MILLER, J.P. - CHAIRMAN

MR. LESLIE HALL, J.P. - MEMBER

DR. DENESE MORRISON, J.P. - MEMBER

DECEMBER 18<sup>th</sup> 2024

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

OPERADORA PALACE RESORTS (JA.) LIMITED

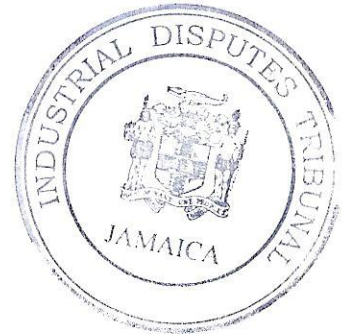
(T/A MOON PALACE JAMAICA GRANDE)

(THE COMPANY)

AND

MR. SEVERIN ALBA

(THE AGGRIEVED WORKER)



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**REFERENCE:**

By letter dated October 2, 2020, the Hon 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 for settlement, in accordance with the following Terms of Reference:

**“To determine and settle the dispute between Moon Palace Jamaica Grande on the one hand, and Mr. Severin Alba on the other hand, over the termination of his employment.”**

However, the parties objected to the Terms of Reference which were subsequently amended by the Minister as stated in letter dated June 23, 2021, to read:

**“To determine and settle the dispute between Operadora Palace Resorts (Ja.) Limited t/a Moon Palace Jamaica on the one hand, and Mr. Severin Alba 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. Errol Miller, J.P.	-	Chairman
Mr. Leslie Hall, 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:

Ms. Karen E. R. Dabdoub	-	Attorney-at-Law
Mr. Abe Dabdoub	-	Attorney-at-Law

In attendance:

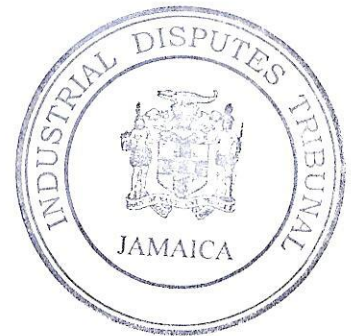
Ms. Joy Chung	-	Human Resources Manager
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**Aggrieved Worker** was represented by:

Mr. Gavin Goffe	-	Attorney-at-Law
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In attendance:

Mr. Severin Alba	-	Aggrieved Worker
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### **SUBMISSIONS AND SITTINGS:**

Briefs were submitted by both parties which made oral submissions during thirty-eight (38) Sittings held between February 11, 2021 and June 27, 2024.

### **BACKGROUND:**

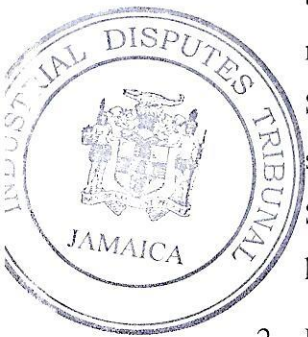
Operadora Palace Resorts (Ja) Limited t/a Moon Palace Jamaica is a company duly registered under the laws of Jamaica with its registered offices situated at Main Street, Ocho Rios, in the parish of St Ann.

Mr. Severin Alba, a United States national, was employed to Operadora Palace Resorts (Ja.) Limited hereinafter called Moon Palace Jamaica (the Company/Hotel), commencing March 27, 2017, in the capacity of "Front to Back Closer". His services were terminated on July 27, 2017, by letter of resignation. Mr. Alba, however, contends that he was dismissed by the Hotel and seeks redress.

The dispute was referred to the Ministry of Labour and Social Security for conciliatory assistance, but the talks were unsuccessful. Consequently, the matter was referred to the Industrial Disputes Tribunal for determination and settlement.

### **CASE OF THE AGGRIEVED:**

1. Mr. Alba was engaged on a fixed term contract for one-year from March 27, 2017 to February 1, 2018 to Moon Palace Jamaica Grande in the capacity of Front to Back Closer, a sales position. His contract provided that he operates from the Hotel's property with responsibility to sell membership in the Palace Elite Vacation Club. He reported to the Sales Manager Mr. Pedro Valledor. In July 2017, Mr. Alba had a disagreement with his supervisor on some decisions which he believed adversely impacted his sales commission. Subsequent to this disagreement, he said that he was called to a meeting and advised that his services were being terminated with immediate effect.
2. Mr. Alba was the sole witness providing evidence in support of his case. He testified that he reported to Mr. Pedro Valledor, the Director of Sales at the Hotel. He said that Mr. Valledor was **"difficult at times ...a little bit more aggressive in his words and the way he treated us"**. Mr. Alba said that the last disagreement he had with him was over an incident that he and his colleagues were not allowed to have facial hair and if they did, they were required by Mr. Valledor, to return to their rooms and remove the hair. He said that a new person came from Mexico (he believes his name was Jose Pepe) to assist temporarily in the sales office. He said that the temporary employee wore a beard and, contrary to the instructions given to everyone, this employee was allowed to work. Mr. Alba said that he enquired about the difference in treatment and was told by Mr. Valledor that he should not question him as the decision was his (Valledor) to make. Mr. Alba said he protested and stated that **"he either shaves like the rest of us or I am not going to shave and the rest**



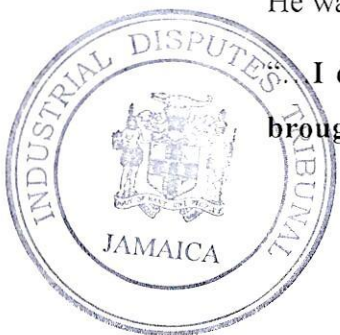
**of us don't have to shave as well".** He said that after that Mr. Valledor sent the person to shave.

3. Mr. Alba explained that the Hotel was an all-inclusive facility and that it had two different sets of guests; those who were Time Share members and the other regular hotel guests. He said that the sales staff who lived on property were given children's wrist band but were allowed adult wrist bands one day per week which allowed them to consume alcohol at the bar. He said that about two days after that incident regarding the facial hair, he was in the bar area. There was an accusation that he had given alcoholic drink to one of his colleagues who was not wearing an adult wristband and that this happened at the pool area in the presence of Adrio Valledor, a Manager and the son of Pedro Valledor.
4. Mr. Alba said that at the end of the workday he was invited to Mr. Valledor's office and was reprimanded for his behavior. He was told that as a consequence, the accounts of regular hotel guests as well as the persons he had bought into membership time share would be taken from him until he showed some respect to Mr. Valledor and other members of management. Mr. Alba said that in response, he indicated that **"respect goes both ways,"** following which, he was screamed at with vulgar and derogatory words and told that he had three hours to pack his things and leave the premises. Mr. Alba said he became very upset and surprised by what had taken place but more so when he was told that the account of persons to whom he had sold membership, would be taken away from him.
5. Mr. Alba testified that he went to his room, calmed down and sent a text message to Mariana, an employee of the Hotel who worked in the Human Resources Department. He said that he informed her of the incident and that Pedro (Valledor) told him that he was fired and must leave the premises within three hours. He said that he did not believe it was legal to just throw him out on the streets with nowhere to go, no airline ticket, nor anywhere to place his belongings. Mr. Alba said that he understood that under the Jamaican law, he had at least ten days to be evicted, since the Hotel was his residence.



6. He said that Mariana told him to calm down and that she would get back to him. He said she subsequently advised him that he would not have to leave within three hours as instructed by Pedro. He was told he would be given time to find a new place and that he could get his things and his airline departure in order.
7. Mr. Alba said that in addition to his weekly base salary, he was paid weekly on a commission basis for selling membership at Palace Resorts. He explained that clients who make purchases are required to make an initial down payment and Additional Down Payments (ADP) over time. He said that he was paid commissions based on those initial down payments and then paid on the ADPs when they are received by the Hotel, sometimes six months or more after the initial sale. He said that his weekly commissions amounted to an average of US\$9000.00 and tendered into evidence a number of pay advice received during his employment [Exhibit 6].
8. Mr. Alba said that he was concerned about the amount of money in commission that was owed to him and how he was going to be paid these monies as he felt that he was at the mercy of the Hotel. He said he subsequently entered into negotiations with the Hotel regarding payment of the commission. Eventually, there was an agreement for him to be paid a part of the money and the balance in two parts at a later date and that this arrangement would allow him to leave the Hotel.
9. Mr. Alba said that while he wanted to continue his contract, Mariana presented him with a letter to sign, but the letter indicated that he was willfully resigning his employment. Mariana told him that if he did not sign the letter, he would not be paid the sums owing to him; money he said that he had earned and which amounted to approximately US\$36,000.
10. During further examination, Mr. Alba said he received the document from Mariana and having had a problem with it, that he met Ms. Joy Chung, the head of Human Resources (HR). He said Ms. Chung went over the document with him and advised him that **"that is the only document that I am getting out of there with any money with. If I don't accept it, if I don't sign it I won't get my money; so that was the ultimatum she explained."** He was asked if he had any proof of the conversations and Mr. Alba in response said that

**I did record with my cellphone the meeting with Mariana when that letter was brought out and she stated that that is the only letter that the Palace Resort has. When**



I questioned her saying I am being terminated and she acknowledged that with a nod and a slight yes 'I know'. Then I was still told from that point to sign, so I did keep that recording for my protection." Mr. Alba said he signed the letter dated July 21, 2017, under duress.

11. The following exchange took place during his examination-in-chief:

- Q Mr. Alba can you see that document?  
(Document shown to witness).  
Is that your signature at the bottom of the document?  
(Technical issues – Mr. Alba frozen)  
Do you see your signature on that document?
- A Yes
- Q. Okay, this is the document that you signed?
- A It appears so.

12. The letter he signed was entered into evidence as Exhibit 2 and is reproduced below:

*Moon Palace Jamaica, July 21st, 2017  
Main Street, Ocho Rios P.O. St. Ann, Jamaica*

**PALACE ELITE, SALES ROOM  
OPERADORA PALACE RESORTS (JA) LT**

*I hereby certify that on this date and in accordance with my interests, I terminate the contract and employment relationship, spontaneously and voluntarily, with respect to the position of FRONT TO BACK CLOSER that I held for this Company until today*

*I declare that to date I have always received timely and timely payment of all benefits to which I have been entitled, not owing any amount of salary, extra time, vacations, holiday bonus, annual bonus, premium Bonuses or incentive awards or any other concept derived from my Individual Contract, never suffering any accident or illness of a professional or work nature.*

*In the same way I manifest that I worked in a day comprised within the legal maximums provided by the Law of Matter.*

*I have the commitment of not to talk in a negative way of Palace Resorts.*

**SINCERILY**

\_\_\_\_\_  
(Signature)



13. At the subsequent Sitting, during the continuation of his examination in chief, Mr. Alba was shown Exhibit 2 and asked the circumstances under which his signature was placed on the document. Mr. Alba said that he did not recognize the document as he never signed it and the signature was not his. He said his first name, **‘Severin’** is spelt with an ‘n’ and ‘sincerely’ is incorrectly spelt as **‘sincerily’** on the document and he maintained that he never signed it. He said that he was seeing the document for the first time and that it was never presented to him by either Mariana or Joy Chung upon his termination. He said that **“the only document that I signed I have a copy of it and you (referring to his Attorney) have a copy of it, but that is not the one.”**
14. Mr. Alba said he had a copy of the document on his cellphone and he was allowed time between Sittings to locate the document that he said he had signed. At the following Sitting, during his continued examination in chief, the following exchange took place:

**Q Can you tell us what those checks revealed?**

**A So I looked through my paperwork and everything I had sent to your system earlier on....**

.....

**Yes, what I was saying is that after speaking the last time I went through because my recollection was, there was a different letter, that was my termination letter to be a resignation letter to them, and after all the papers I found I sent to UMASA, this was not included anywhere..... It’s over five years, my recollection, I couldn’t remember the letter but after examining the signature and looking at the contract, the termination agreement, and realizing that there is another page that I have in my possession, this is most likely the page that I was forced to sign that day.**



15. Mr. Alba was further examined on Exhibit 2 and the following is an extract from the examination:-

Q Mr. Alba are you the author of this document?

A No

Q Did you type it up?

A Of course not, I did not type any document.

Q Did you make any amendments or insertions in this document?

A No, Sir. I simply asked to give me a document that was stating the truth that I was being terminated and I was told that that was the only document and I have no choice if I want to receive my money, I had to sign it.

Q Can you tell us who gave you the document?

A. The original person was Mariana, I can't remember her last name, she is still with the company I found out, and so then I believe it's after that is when I had a problem with that document, is when I believe I met Joy Chung.

Q Can you tell us about the meeting with Mrs. Chung?

A Mrs. Chung, well she went over the document with me when I was told that I had to sign it reiterating the fact that that is the document that's required and that is the only document that I am getting out of there with any money with. If I don't accept it, if I don't sign it I won't get my money; so that was the ultimatum she explained.

16. He said that after the first meeting, he waited to see what the Hotel would produce as they were unwilling to put anything in writing. He said after some days he received a letter stating the amount of money and the dates on which he should be paid. Mr. Alba admitted that he recognized and signed Exhibit 3, which is reproduced below:



Moon Palace Jamaica. July 21<sup>st</sup>, 2017.  
Main Street, Ocho Rios P.O. St. Ann, Jamaica

I SEVERIN ALBA am receiving the amount of USD\$13,538.59 via check N<sup>o</sup>40113475 of The Bank of Nova Scotia Jamaica Limited, Ocho Rios Branch.

This payment represents my termination payment and my commissions earned until today Friday, July 21<sup>st</sup>, 2017.

I understand that my pending commissions from July 22<sup>nd</sup>, 2017 to January 2018 will be payable to me, as long as they are effective for the company and without cancellations, by OPERADORA PALACE RESORTS (JA) LT with the medium of a deposit to the account (*number quoted*) of Charles Schwabb Bank (if there is more information required to make the deposits, this will be provided to the Company) in two payments:

- October 31<sup>st</sup>, 2017
- January 31<sup>st</sup>, 2018

With my affixed signature I have knowledge that I'm in full agreement of the contents above

Name: *Severin Alba*  
Signature: (signed)

Witness (Mariana ..... (remainder is illegible)

(signed)  
Joy Chung  
Moon Palace Jamaica  
HR MANAGER

17. Mr. Alba reiterated that when his services were terminated, he recorded the meetings with Mariana on July 19 and 20, 2017, on his cellphone for his own protection. He said he believed that Ms. Joy Chung would have been present, but the tape recording consisted primarily of conversations between himself and Mariana. The first recording which took place on July 19, 2017, was played during the Sitting.

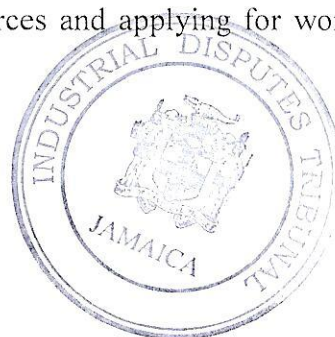


18. In respect of the agreed payments, he said that he received the first payment a few weeks after it was promised in October 2017. However, the amount that was due to be paid in January 2018, was not received. He testified that despite sending emails to the Hotel (Exhibit 14) and after months of excuses, he said it has led to this point today.
19. Mr. Alba said he sought alternate employment since his termination, by returning to Mexico where he was hired at Temptation Hotel in mid-November 2017.
20. Mr. Alba contends that he was constructively dismissed. In his Brief, he indicated that he is seeking to be reinstated with full retroactive pay which:
- a. Should include the average sales commissions he earned over the course of his employment from the date of dismissal to the date of the Award.
  - b. Alternatively, he wishes to be compensated by the payment of his gross salary, commissions and bonuses he would have received from the date of his dismissal to the date that his contract would have ended.

However, in his closing submission, his Attorney indicated that Mr. Alba does not wish to be reinstated but to be compensated in an amount that the Tribunal thinks fit, bearing in mind his total compensation.

#### **CASE FOR THE COMPANY:**

21. Moon Palace Jamaica Grande contends that Mr. Severin Alba was employed as a Front to Back Closer on a one-year commission-based fixed term contract. He reported to Mr. Pedro Valledor, Sales Manager in the Palace Elite Vacation Club department. In or around mid-July 2017, Mr. Alba resigned from his employment. Approximately ten months after his resignation, he alleged that he was unfairly dismissed but the Hotel's position is that Mr. Alba voluntarily resigned from his employment.
22. Ms. Joy Chung, the then Human Resources Manager at Moon Palace Jamaica Grande, was the sole witness for the Hotel. She was employed to the Hotel for approximately six and a half years and her duties included human resources and applying for work permits for foreign nationals to be employed to the Hotel.



23. She testified that Mr. Alba had experience in membership clubs and that he first came to the Hotel in November 2016. He stayed for a few weeks on a familiarity visit to Jamaica to determine if he would be interested in the job. A decision was subsequently made to engage him and being a United States citizen, an application was made to the Ministry of Labour and Social Security for a work permit. He was asked to provide supporting documents for the application and among them he provided birth certificate, resume and school/university certificates from the University of California. She said she was not aware that the certificate from the University of California was a false document.
24. Ms. Chung said that Mr. Alba left Jamaica in early January 2017, while the application for the work permit was being processed and returned to the island on February 2, 2017, shortly after the permit was approved. He was then employed to the Hotel effective March 27, 2017. She said that both his passport and the Passport Immigration and Citizenship Agency (PICA) documents, verified when he left and returned to the island.
25. In explaining Mr. Alba's compensation, Ms. Chung reiterated that payment of commission commences with the initial payment by the guest and that further payments are based on subsequent receipts from the guest. She said that if the salesperson leaves and payments continue, those commission would not be paid to the salesperson. She referred to clause 2.5 of Mr. Alba's contract of employment which states that **"Your entitled commission will end on termination of employment (however arising)"**.
26. She testified that in July 2017, it was reported to her that Mr. Alba indicated to HR that he was leaving but that he was negotiating for payments over and beyond his entitlements. Mr. Alba, she said, insisted that payment of commission for sales be made prior to his separation and that he should receive any commission that the Hotel received beyond his date of resignation. Ms. Chung said that those negotiations lasted a few days before she became involved in the matter. He eventually negotiated a settlement, payment of which would be over two periods, October 2017 and January 2018. She said that she discussed his demands with her head office in Mexico and formatted the Agreement. She testified that Mr. Alba signed off on the agreement together with the exit form that is the resignation form. [Exhibits 2 and 3].



27. Ms. Chung said that Mr. Alba was not forced to sign the resignation form but based on the terms of the Agreement, he had to sign off on it. Mr. Alba was neither employed nor working with the Company during the negotiations. He stayed on the property as permission was granted during the negotiations and he remained for a couple days before leaving.
28. In response to the statement in Mr. Alba's Brief that **"in or around July 2017, Mr. Alba was summoned to a meeting with the Human Resources Manager, Ms. Joy Chung, in which he was told that he was being terminated effective immediately and that he had to vacate the hotel premises within 3 hours, despite seven months remaining on his fixed term contract"**, Ms. Chung said the statement was not true and she was shocked when she read it. She, however, explained that only the HR or the MD could fire Mr. Alba and reiterated that Pedro Valledor was the Sales Manager for the Palace Elite Club.
29. She said that Mr. Alba received a cheque for about US\$13000 and he received another cheque in October 2017 for US\$9000 which he acknowledged by email. She said that after he left the Hotel, he wrote to say that he had not received the payment for January 2018.
30. Ms. Chung said that she was not aware that Mr. Alba was recording the conversations between herself, Mariana and himself as he had not sought or obtained permission to do so.
31. The Company's position is that Mr. Alba voluntarily resigned from his employment and entered into an agreement with the Hotel where he confirmed his decision to resign and agreed to accept payment of future commissions under certain terms and conditions.

**ANALYSIS OF THE EVIDENCE BY THE TRIBUNAL:**

32. The Tribunal must determine the following:
- Did Mr. Alba voluntarily resign his position or was he constructively dismissed by the Hotel?
  - If he was dismissed, was his dismissal justified?
  - If Mr. Alba was dismissed, would he be entitled to any compensation?



a. **DID MR. ALBA VOLUNTARILY RESIGN HIS POSITION OR WAS HE  
CONSTRUCTIVELY DISMISSED BY THE HOTEL?**

33. The evidence is that Mr. Alba resigned his employment from the Hotel by letter dated July 21, 2017 (Exhibit 2). However, while the parties agree that he resigned, they differ on the circumstances relating to his resignation, that is, whether it was voluntary, or it was based on the prevailing conditions which would have forced him to do so.
34. Mr. Alba contends that his Manager, Mr. Valledor, fired him and told him to leave the Hotel property in three hours. He said that he immediately informed the Human Resources (HR) Department of the incident even as he bemoaned the fact that as a foreign national, he was being thrown on the streets with nowhere to go. He said that he was eventually informed that he would be given time to find a new place as well as to make travel arrangements. Ms. Chung, in her evidence, confirmed that Mr. Valledor was the Sales Manager for the Palace Elite Club and stated that Mr. Alba's employment could only be terminated by HR or the Managing Director (MD). However, Mr. Alba's claim that he was dismissed by Mr. Valledor went unchallenged by both Mariana and Ms. Chung. In supporting his claim Mr. Alba testified that, **"when I questioned her (Mariana from HR) saying I am being terminated (and) she acknowledged that with a nod and a slight yes 'I know'."**
35. Ms. Chung testified that, **"...it was brought to my attention by one of my assistants whom he spoke to, said he is leaving, he had discussions with Pedro..."** She was aware that Mr. Alba was leaving and admitted that she was involved with the preparation of the agreement for the 'negotiated settlement' and the letter of resignation. However, she provided no evidence that she enquired into the reason he was 'leaving' nor did she or anyone else take any action to assure Mr. Alba that Mr. Valledor had no authority to dismiss him and that Mr. Alba should continue working as his employment was secure.



36. During the discussion between Mariana, Ms. Chung and Mr. Alba, there were concerns about the commission that was due to Mr. Alba. Ms. Chung enquired whether he had spoken to Mr. Valledor about it and Mr. Alba's retort was that, **"He's the one that fired me from the company. So he's the reason I don't work here and talking to him has never been possible 'cause he doesn't listen to anyone."** [Exhibit 4A, time stamp 4:39 - 4:58]. This is clear evidence that Ms. Chung would have been aware of the reason for Mr. Alba's "leaving".
37. Mr. Alba, apparently faced with the possibility of neither a job nor a place to live in Jamaica, and the expectation of leaving the island, sought to obtain from the Hotel, payments that he claimed were due to him. He said that in the process, he had to enter into 'negotiations' with the Hotel and having secured an agreement, he was then required to sign a "resignation letter" prepared by the Hotel. He said that he questioned why he should sign a resignation letter when he was dismissed by the Hotel. However, he testified that the response provided was that he was required to sign it, or the deal would be off. He further stated that Ms. Chung went over the document with him and told him, **"that is the only document that I am getting out of there with any money with. If I don't accept it, if I don't sign it I won't get my money; so that was the ultimatum she explained."** He said that consequently, he signed the letter of resignation under duress.
38. It is the Hotel's contention, however, that Mr. Alba's employment was not terminated by Moon Palace but that after engaging in negotiations over the course of several days and having reached an agreement, Mr. Alba signed his resignation letter and a letter setting out the agreement. Mr. Alba, having complained that his services were terminated and the failure of management to correct Mr. Valledors' action but instead to engage Mr. Alba in discussions to settle his claim for outstanding obligations could not support the assertion that Mr. Alba voluntarily resigned his position. Mr. Alba was obviously placed in a dilemma as to whether he should refuse to sign the document and forfeit the money or sign to receive the money due to him despite knowing that he did not resign from his employment.



He therefore, opted to sign in an effort to be paid the sums agreed. It would, therefore, be reasonable to conclude, that the behavior of the Hotel forced Mr. Alba to sign the letter of resignation, which gave the impression that he severed himself from the job. As a consequence of the Hotel's action, Mr. Alba asserts that he was constructively dismissed by the Hotel.

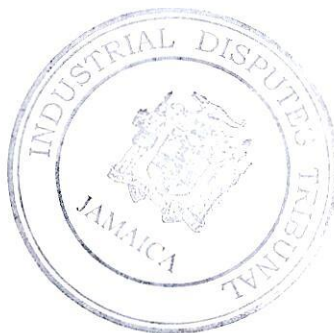
39. Constructive dismissal occurs where an employee leaves his employment as a result of his employer's conduct. In the case of *Severin Alba vs Minister of Labour and others* [2020] JMSC Civ 133, at paragraph 16 of the judgment Nemhard J. relied on the case of *Western Excavating (ECC) Ltd v Sharp* [1978] 1 All ER 713 where Lord Denning explained that:

"If an employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. **"If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed."** The employee is entitled in those circumstances to leave at that instant without giving any notice at all, or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

[*Severin Alba vs Minister of Labour and others* [2020] JMSC Civ 133; para 16]

40. Mr. Alba's claim that he was constructively dismissed, therefore, seems reasonable, based on the chronology of events.

**b. IF HE WAS DISMISSED, WAS HIS DISMISSAL JUSTIFIED?**



41. The evidence has indicated that Mr. Alba was dismissed by his employer. However, the terms of his contract were not observed in respect of his termination. Para 15.1 of Mr. Alba's Contract of Employment (Exhibit 1) provides that, **"After the end of the Probationary Period, either you or the Company may terminate your employment at any time on giving not less than two weeks' prior written notice."** Mr. Alba was given 3 hours to leave his employment in breach of Clause 15 of the Contract. Having been given the instruction to leave without any reversal by the management, Mr. Alba complied and sought to obtain benefits that he said were due to him. This activity took a few days because of the involvement of the head office in Mexico.

42. Clause 1.1 of his contract states that:

**"This Agreement is effective from the date set out in Item 2 of the Schedule and shall remain in force until the date set out in Item 3 of the Schedule subject to satisfactory reviews of your performance and general attitude and your adherence to the Company's rules, regulations and policies that are in place."**

There was no evidence that he breached any of the provisions of his contract.

43. Paragraph 2 of the Labour Relations Code provides that:

**"Recognition is also given to the fact that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it, ensuring continuity of employment, security of earnings and job satisfaction."**

No dignity was accorded to Mr. Alba when he was informed that he was dismissed and had three hours to leave the property. He was not provided with the requisite statutory notice nor was he cited for a breach of his contract of employment.

44. During cross examination of Ms. Chung, the following exchange took place:

**Q. Mrs. Chung, are you aware of Mr. Valledor advising Mr. Alba that he was routinely failing to demonstrate top performance?**

**A. No, I am not.**

**Q. Are you aware of Mr. Alba refusing, or failing to regularly comply with Hotel's policies and procedures?**

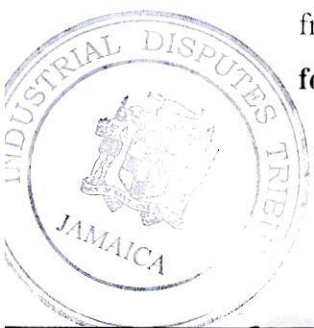


- A. No
- Q. Would you say that Mr. Alba's performance and attitude began to decline over the months he was employed to Moon Palace?
- A. His attitude and performance -?
- Q. Yes, began to decline.
- A. I couldn't speak to that.
- Q. you couldn't speak to that, okay. Would you say that the volume of his sales increasingly diminished?
- A. I can't speak to that either.

It is clear from the responses in this exchange that Mr. Alba's performance was not in question and therefore his dismissal could not be for a breach in his contract of employment. In conclusion, there was no due process involving the termination of Mr. Alba's employment rendering the decision taken by the Hotel to be unjustified.

c. IF MR. ALBA WAS DISMISSED, WOULD HE BE ENTITLED TO ANY COMPENSATION?

45. Mr. Alba had a one-year contract with the Hotel that was due to expire on February 1, 2018 and at the time of his dismissal he had only served four months, that is, to July 27, 2017. The contract provided that he receives a gross base salary of J\$6,622 per week as well as commission that is paid on a weekly basis in United States Dollars.
46. Clause 2 of the contract of employment also provided that his entitled commission would end on termination of his employment, however arising. During cross examination, the Hotel sought to establish that Mr. Alba was not entitled to these commissions after the contract was terminated. However, following his dismissal, the Hotel engaged Mr. Alba in discussions and ostensibly agreed to waive that provision of the contract. This argument was therefore found to be redundant since the Hotel mutually agreed with Mr. Alba to the payments outlined in Exhibit 3. The Agreement specifies that the pending commission from July 22, 2017 to January 2018 would be paid to him, **"as long as they are effective for the Company and without cancellations."** It further provides that they would be made



in two payments, that is, October 31, 2017 and January 31, 2018. No evidence was provided that the sales giving rise to the commission were cancelled.

47. Mr. Alba, in his email to the Hotel dated March 27, 2018 (Exhibit 14), admitted that in keeping with the agreement, he received the payment in October 2017 amounting to US\$9,799.53. However, the subsequent amount of US\$3,739.06 together with the cancellation fund of US\$2,500 totalling \$6,239.06, he claimed was outstanding for January 2018. Ms. Chung, in her email responses in March 2018 (Exhibit 14), did not indicate that any cancellations took place rendering the commission void nor did she dispute the amount stated by Mr. Alba but rather indicated that she was seeking to investigate and respond. There was no evidence of a further response.

48. The Tribunal concludes that Mr. Alba would be entitled to compensation given that he was:

- a. not found to be in breach of his contract.
- b. dismissed without the required statutory notice.
- c. not allowed to complete his contract of employment.

#### **TRIBUNAL'S FINDINGS:**

49. During the hearing, the Company introduced evidence regarding the credibility of Mr. Alba. In particular, he was accused of providing false information to the Hotel upon employment, including a forged University Certificate. There is no evidence that prior to these proceedings before the Tribunal, this matter had any impact on either the engagement or termination of Mr. Alba's employment. In any event, the Tribunal is of the view that the Hotel had a responsibility to carry out its due diligence upon Mr. Alba's engagement and not after termination of his services. Since it did not fall within the Terms of Reference, the Tribunal did not place any weight on this evidence during its deliberations.

50. There was also contention as to whether Mr. Alba should have been paid commissions after his employment ended based on a clause in his contract of employment. However, there was uncontroverted evidence that the Hotel and Mr. Alba entered into discussions and mutually agreed that payment of commissions would be made for the period in dispute.



51. The Tribunal, having reviewed the evidence, finds as follows:

- a. Mr. Severin Alba was constructively dismissed by Operadora Palace Resorts (Ja.) Limited (t/a Moon Palace Jamaica Grande) with approximately seven months remaining in his contract.
- b. Mr. Alba's dismissal was unjustifiable, but he does not wish to be reinstated.

### **AWARD**

In accordance with Section 12 of the Labour Relations and Industrial Disputes Act, the Tribunal awards that the termination of the employment of Mr. Severin Alba was unjustifiable and he should be compensated in the amount of Two Hundred and Thirty Thousand United States Dollars (US\$230,000.00).

DATED THIS 18<sup>th</sup> DAY OF DECEMBER 2024.



Mr. Errol Miller, JP  
Chairman

Mr. Leslie Hall, JP  
Member

Dr. Denese Morrison, JP  
Member

Witness:

Nicola Smith Marriott (Mrs.)  
Secretary to the Division