

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 19/2014

SETTLEMENT OF DISPUTE

BETWEEN

RBC ROYAL BANK (JAMAICA) LIMITED

AND

COREY MCDONALD

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	CHAIRMAN
MR. TREVOR GRAHAM, JP	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

OCTOBER 16 , 2015.

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**RBC ROYAL BANK (JAMAICA) LIMITED
(THE COMPANY)**

AND

**COREY MCDONALD
(THE AGGRIEVED)**

REFERENCE:

By letter dated April 7, 2014 the Honourable Minister of Labour and Social Security pursuant to Section 11A. (1) (a) (i) of the Labour Relations and Industrial Disputes Act of 1975 (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 RBC Royal Bank (Jamaica) Limited on the one hand and Corey McDonald 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 to hear this matter comprised:

- Mr. Charles Jones, CD, JP. - Chairman
- Mr. Trevor Graham, JP - Member, Section 8(2) (c) (ii)
- Mr. Edward Dixon, OD - Member, Section 8(2) (c) (iii)

- **Mr. Dixon regrettably died on February 8, 2015 and in accordance with the provisions of Section 8 (4) of the Labour Relations and Industrial Disputes Act Mr. Clinton Lewis was appointed to replace him.**

REPRESENTATIVES OF PARTIES:

The **Bank** was represented by:

- Mr. Gavin Goffe - Attorney-at-Law
- Mr. Jermaine Case - Attorney-at-Law

The **Aggrieved** was represented by:

- Mr. Douglas Leys - Attorney-at-Law
- Ms. Kimone Tennant - Attorney-at-Law

In attendance was **Mr. Corey McDonald** - Aggrieved worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties and oral submissions made during twelve (12) sittings convened, from June 25, 2014 to April 29, 2015.

BACKGROUND TO THE DISPUTE:

Mr. Corey McDonald was employed to RBC Royal Bank (Jamaica) Limited (now Sagicor Bank Jamaica Limited) (“the Bank”) in the position of Supervisor, Roycash Centre. Mr. McDonald was notified of several alleged breaches in his performance. His response to the alleged breaches

was not accepted by the Bank and consequently a disciplinary hearing was scheduled to enquire into the matter.

The first meeting was scheduled for September 3, 2013, and due to Mr. McDonald's non-attendance, another was scheduled for September 5, 2013, to which Mr. McDonald again did not attend. As a result the Bank scheduled a third hearing on September 9, 2013. Mr. McDonald again was not in attendance. In his absence the Bank reportedly considered the breaches identified and took the decision to terminate Mr. McDonald's services with effect from September 9, 2013.

The matter was reported to the Ministry of Labour and Social Security where the parties failed to arrive at a settlement. Consequently the Honourable Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal for settlement in accordance with Section 11A (1) (a) (i) of the Labour Relations and Industrial Disputes Act of 1975.

COMPANY'S CASE:

The Bank submitted the following in support of its case.

Throughout Mr. McDonald's tenure, the Bank received several reports concerning his conduct which would amount to breaches of the principles of the Bank's Code of Conduct. In an email of August 28, 2013 from Miss Nicole Roberts, the Bank's Manager of Employee Relation, Human Resources, to Mr. McDonald, she notified him of the several alleged breaches and requested a response by August 30, 2013. That email was copied to Mr. Alrick Smith, the Union Delegate.

On August 30, 2013, Mr. McDonald sent a very terse response indicating generally that the allegations were baseless and without merit and he failed to provide further details of his reasons for saying so. In addition to the Union Delegate, Mr. McDonald also copied Mr. Kavan Gayle, the Bustamante Industrial Trade Union (BITU) and others.

The Bank then scheduled a disciplinary hearing for September 3, 2013. In response to the invitation, Mr. McDonald declared that any hearing must be in the presence of Mr. Kavan Gayle, President of the BITU.

The established practice at the Bank is that union delegates would attend disciplinary hearings in respect of its members.

Consistent with that practice, the BITU made it patently clear to all that its President would not be representing Mr. McDonald at the internal disciplinary hearing.

On September 3, 2013, the BITU responded to Mr. McDonald's email and copied the Bank's officers. The contents included the following:

“Reference is made to the allegations of breaches raised by Ms. Nicole Roberts on August 28, 2013. This is regarded as a new matter. Pleases (sic) follow the established protocol and practice of having a delegate of your choice represent you at the hearing.”

The following day and in spite of the clear instructions received from the BITU, Mr. McDonald sent an email alleging that his lawyers (who were not identified) had instructed him to have Mr. Kavan Gayle at the hearing.

The Bank scheduled another disciplinary hearing for September 5, 2013. No response was received from Mr. McDonald and he did not attend. The Bank scheduled another disciplinary hearing for September 9, 2013. No response was received from Mr. McDonald and he did not attend.

In Mr. McDonald's absence, the Bank considered the charges against him based on the material which was available, and determined that the allegations were proven. The Bank decided to terminate Mr. McDonald's employment and communicated its decision to him by letter of September 9, 2013.

The Attorney representing the Bank submitted also that the Bank complied with the Labour Relations Code. There was no evidence that Mr. Kavan Gayle had agreed to represent Mr. McDonald and that he Mr. McDonald endeavored to find ways to ensure the hearing did not take place and treated with disregard his right to be heard. He concluded that the decision to dismiss him was “substantively as well as procedurally justified.”

CASE OF THE AGGRIEVED:

Mr. Douglas Leys, the Attorney representing Mr. McDonald submitted that the substantive reason for his client’s dismissal was not a part of the dispute, but was whether due process was followed in determining the termination of his services. The following was put forward:

The dismissal of Mr. Corey McDonald from his job was manifestly unfair, in that:

- i. The Bank acted with undue haste in dismissing Mr. McDonald in contravention of the spirit of the Labour Relations Code.
- ii. The Bank’s attempt to schedule three meetings within just one week, when they knew that Mr. McDonald’s representative of choice was on vacation, and that Mr. McDonald would not attend without him, showed bad faith, and a disingenuous approach to the disciplinary procedure.
- iii. The Bank acted unreasonably in convening and conducting a disciplinary hearing in the absence of Mr. McDonald’s representative, when it had previously adjourned disciplinary hearings on this basis and failed to notify or failed to sufficiently notify Mr. McDonald that the hearing at which he was purportedly dismissed would be held with or without the presence of his representative.
- iv. The Bank convened disciplinary hearings despite there being before the Ministry of Labour and Social Security unresolved grievances involving Mr. McDonald.
- v. In reaching its decision to dismiss Mr. McDonald, the Bank relied on matters

dating back more than three months prior to the dismissal; some of which were never notified to Mr. McDonald. This contravened the Bank's Code of Conduct.

The Bank failed to follow its own procedure for disciplinary hearings to the detriment of the employee.

Effectively, no acts of impropriety has been proven against Mr. McDonald, as he rejected and refuted all the allegations made against him in his limited responses contained in email of 30 August 2013. Without more and in particular, without a proper disciplinary hearing involving Mr. McDonald and his representative, the allegations remained unproven.

Alternatively, the punishment was disproportionate to the charges, particularly in the light of the limited responses to the allegations provided by Mr. McDonald under cover of email dated 30 August 2013.

Mr. Leys further submitted that the termination of Mr. McDonald's appointment was unfair, unlawful and unjustified.

TRIBUNAL'S DELIBERATIONS:

The Tribunal's main focus was to determine whether or not proper procedures were followed in arriving at the decision to dismiss Mr. McDonald. The Tribunal therefore took careful note of the sequence of events.

- On 13 November 2012 Mr. McDonald was sent on vacation leave and resumed work on 3 December 2012.
- On resumption his job functions were changed
- There followed a number of internal issues which were referred to the Ministry of Labour and Social Security in keeping with the Bank's grievance procedure
- Mr. McDonald made allegations of corruption of senior personnel within the RBC. These personnel included Mrs. Coretta Russell Foster and Miss Nicole Roberts.
- The Head, Employee Relations in response to the allegations advised Mr. McDonald as follows:

“Based on its review of the matters raised by you at the meeting of June 30, 2013 in support of the allegations of corruption on the part of RBC officers, RBC is of the view that the allegations of corruption made by you are without merit. The matters raised pertained to disciplinary matters that have been previously heard or that are currently being heard, whether at the local level or with the Ministry of Labour, in keeping with the established procedures for labour disputes. The attempt to have those matters brought before the panel convened for the purpose of providing information on corruption on the part of RBC officers was therefore inappropriate.”

- The Bank through Miss Nicole Roberts, Manager of Employee Relations, Human Resources emailed Mr. McDonald on August 28, 2013 outlining five instances of alleged breaches of the Bank’s Code of Conduct and requesting a response by August 30, 2013.
- Mr. McDonald responded by email dated August 30, 2013 stating that three (3) of the alleged breaches were already dealt with and the other two (2) were baseless and without merit.
- Miss Roberts emailed Mr. McDonald on September 2, 2013 advising him that the Bank had scheduled a hearing for Tuesday, September 3, 2013 at 9:30 a.m. at which he would be given an opportunity to “put forward any mitigating factors and/or further explanations that he wished the Bank to consider in arriving at a decision in these matters.” The email also stated that the hearing would be chaired and conducted by Miss Roberts. He was also reminded in the e-mail that he may be accompanied at the hearing by his union representative.
- Mr. McDonald replied by email dated September 2, 2013 to Miss Roberts stating:

“Further to telephone conversation Anthony Brown/Keisha McCarthy any hearing must be in the presence of Mr. Kavan Gayle, President of the BITU. However, Mr. Gayle is currently on vacation and upon his return I will be available.”
- The BITU on September 3, 2013 e-mailed Mr. McDonald to follow the established protocol and practice of having a delegate represent him at the hearing.
- Miss Susheila Maharaj, Head of Employee Relations e-mailed Mr. McDonald advising him that he was required to attend the hearing and that he had the right to be accompanied by a Union Representative.

- Miss Roberts emailed Mr. McDonald on September 3, 2013 advising that in light of the fact that neither he nor his Union Representative attended the hearing, another date was scheduled for Thursday, September 5, 2013 at 10:30 a.m. He was also advised as follows:

“Further, the BITU indicated that the allegation contained herein constituted a new matter and directed you to ‘follow the established protocol and practice of having a union delegate of your choice represent you at the hearing”

- Miss Roberts emailed Mr. McDonald on September 5, 2013 advising him that having again failed to attend the hearing scheduled for that date, a third hearing was scheduled for September 9, 2013 at 10:00 a.m. In the email Miss Roberts stated:

“further, you were reminded that the allegations contained herein constituted a new matter”

She further advised him that his non-attendance may have resulted in a determination being made and stated also:

“while you are at liberty to consult with your attorney at law, you are reminded that this is an internal hearing and his/her presence is not permitted.”

He was again advised that he may be accompanied by his Union Representative.

- On September 9, 2013 at 11:42 a.m. Mr. Alrick Smith, Delegate emailed Miss Roberts questioning whether the Bank should be having any disciplinary hearing involving the same individuals while there were two outstanding matters at the Ministry of Labour and Social Security. He also asked why a cease and desist letter dated 17 April 2013 issued from BITU to the Bank regarding Corey McDonald was being ignored. The email further went on to advise that the Ministry of Labour had instructed that **“we should not attend any disciplinary hearing while there are unresolved grievances currently before them”**.
- On September 9, 2013 the date on which the hearing was reportedly held, at about 4:00 p.m. Mr. McDonald received a letter of dismissal which states:

“as a consequence of your serious misconduct, the bank has taken the decision to terminate your services effective September 9, 2013.”

The first two paragraphs of the letter read:

“Reference is made to previous communication to you dated 28 August 2013, in which you were requested to provide an explanation regarding allegations of breaches of the Code of Conduct and to your subsequent statement dated August 30, 2013. Reference is also made to our communication dated September 2, 3 and 5th respectively inviting you to a hearing, which you have opted not to attend.

In view of your failure and / or refusal to attend the said hearing, RBC is left with no alternative but to conclude on this matter as set out below, based on the information currently available.”

The Tribunal further deliberated on the following:

- Mrs. Russell Foster stated in her evidence that the panel that made the decision to dismiss Mr. McDonald comprised the Head of Operations for the Caribbean - Donnet Turnquist; the Head of Service Delivery – Marcia Evans; and the Human Resource Business Partner - Coretta Russell Foster.
- The Tribunal noted that Miss Roberts had advised Mr. McDonald in her email to him on August 30, 2013 that she would be conducting the hearing; and Mrs. Coretta Russell Foster, Human Resource Business Partner at RBC confirmed during cross examination that the Manager of Employee Relations, the said Miss Roberts would be conducting the hearing.
- The Tribunal did not ignore the following exchange during the Examination in Chief of Mr. McDonald by Mr. Leys:

Q. “If you go to, I think it is Appendix 2 in that Brief you would see the e-mail I am referring to, it’s page 2 of 4, that is the one dated September 2, 2013, from Nicole Roberts to you, and it says:

‘Reference is made to our e-mail dated August 28, 2013, on the above subject and to your written explanation dated August 30, 2013.

Given the seriousness of these matters, the Bank has scheduled a hearing at which you will be given an opportunity to put forward any mitigating factors and/or further explanations you may wish the Bank to consider in arriving at

a decision in these matters. The hearing will be chaired and conducted by the undersigned and has been scheduled as follows: Tuesday, September 3, 2013. And you are to confirm your attendance, and please be reminded that you may be accompanied at the hearing by your union representative.'

Now, sir, this was sent on Tuesday, September 2, 2013, at 10:36 a.m., and the date of the hearing here is September 3. As a union delegate do you have anything you found irregular to say about the date you received this and the date of the hearing – as a former union delegate I should say?

A. Based on the prescribed rule pertaining to hearings the Bank stipulates three clear days for you to respond to any hearing and, if necessary, you can give explanation and request extension if needed. Now, in the rule guide that was given as evidence it stipulates that these three days are necessary to avoid undue duress to staff in responding to any such hearings. One of the objections to this request is the person making the request is Nicole Roberts. Nicole Roberts is one of the persons that was mentioned in the corruption allegations made by me to the senior persons at RBC – so based on the rules at the Bank Nicole Roberts should not be the chairman or participating in any hearing at all called based on the rules of the Bank contained in that rule book that was given as evidence”

- The Tribunal also noted that there was no indication in the letter of dismissal that the hearing was in fact held and whether the findings were the basis of the conclusion as set out in the second paragraph of the letter. In fact Mrs. Russell Foster in her evidence stated that “*no hearing was held.*” Furthermore, the Tribunal observed no evidence that procedures set out in the Bank’s manual - **Industrial Relations Guidelines for Consequence Management, (IR Manual)** tendered as Exhibit 1 were observed. Under the rubric **Conduct of the Hearing**, the last paragraph states:

“The Bank must NEVER conclude on the guilt of the employee at the meeting. This suggests that the Bank had decided on the outcome before the meeting and that the hearing was therefore not an impartial one. A summary report with

recommendations must then be done by the Chairperson of the meeting and forwarded with disciplinary recommendations to the relevant decision makers.”

The Tribunal in examining the decision-making process paid attention to the evidence given by Mrs. Russell Foster. The following quotes from the verbatim notes are relevant.

During Examination in Chief:

Mr. Goffe *Q.* *“And based on the information available, who made the decision ultimately as to whether the decision should have been to dismiss him or otherwise?”*

A. *The Head of Operations, the Head of Service Delivery, the HR Business partner would have been.”*

In response to a question from the Chairman, she clarified that the Head of Operations was for the Caribbean.

During the Cross Examination, Mrs. Russell Foster stated that when the recommendation was made for Mr. McDonald to be dismissed, they were not all in the same room, because the Head of Operations was in Barbados so it was not a sitting together.

The follow-up questions and answers were of particular interest of the Tribunal:

Mr. Leys

Q. *“I am not sure, help me with this. The panel that was convened to hear the charges against Mr. McDonald you are saying that they were not all in one room?”*

A. *No*

Q. But had Mr. McDonald been present then everybody would have been able to participate in that hearing?

A. But had Corey been present we wouldn't have gotten to that stage. He was asked to attend a hearing and the hearing is conducted by the Manager of Employee Relations, who is local, and she was at work so she would have been there.

Q. Let me try and understand. The actual hearing would be conducted by a panel?

A. No.

Q. I am trying to understand, who would conduct the hearing?

A. Our Manager of Employee Relations

Q. One person?

A. She conducts the hearing, and she would take with her whomever she deemed depending on the matter that was before her. So it could have been that she would have taken with her the Head of Service Delivery – Marcia Evans, or in some cases it would actually just be another HR Representative.”

Based on the exchange during Cross Examination which also spoke to no hearing being held, the Tribunal questioned who would have then submitted the summary report and recommendations to the relevant decision makers as outlined in the Bank's guidelines.

Mrs. Russell Foster reiterated that the panel that took the decision to dismiss Mr. McDonald would have been the Head of Operations, Donetta Turnquest, the Head of Service Delivery, Marcia Evans; and the HR Business Partner, Coretta Foster.

The Tribunal also took note of the urgency displayed in presenting Mr. McDonald his letter of dismissal; as also Mr. McDonald's evidence regarding the manner in which the letter was delivered, a statement that was not challenged. The Tribunal found these actions to be in conflict with the guidelines contained in the Bank's IR Manual referred to above, and as outlined under the rubric **Communication of Final Decision:**

“The Bank should make every effort to communicate its decision to the employee within one week of the meeting. The final decision should be communicated in a face to face setting by the employee's Unit Head. If the decision is to dismiss the employee, this decision should be communicated with compassion. In some instances, the Bank may wish to make the Employee Care Program available to the employee for a period following the dismissal.”

During its deliberations the Tribunal noted the time lapse in addressing the breaches for which Mr. McDonald was accused, and observed that notwithstanding that the reported breaches occurred on diverse dates between December 18, 2012 and May 6, 2013, it was only on August 28, 2013 that these were addressed to Mr. McDonald for his response. This did not conform to the last paragraph in the Bank's **Progressive Discipline – Employee Conduct Manual** which was tendered in evidence, and which states:

“10. Conclusion

.... All disciplinary matters must be attended to promptly by the Supervisor or Branch/Unit Manager, as any undue delays would cause the effectiveness/action taken to be compromised. In addition, undue delays, or deviation from this Policy may seriously hamper the Organisation's position and reputation, should the matter go before an external third party.”

Neither did it escape the Tribunal's attention that the time lapse from the issuing of the correspondence containing the charges to the setting of three dates for the hearing, and the dismissal of Mr. McDonald was thirteen days.

It was disclosed that Mr. McDonald, having received notification of the hearing on September 3, 2013 advised Miss Roberts that he wished the hearing to be in the presence of Mr. Kavan Gayle. This no doubt was in keeping with the employee's right to representation as outlined at Page 7 of Exhibit 1 – RBC Royal Bank (Jamaica) Limited – **Industrial Guidelines for Consequence Management** – which reads:

“Employee’s Right to Representation -*The employee must also be told of his right to his trade union representation at the meeting and must be asked to provide the name of the representative he has selected so that appropriate arrangements for the representative’s attendance can be made. Attorneys are not eligible to attend such bilateral meetings. Relatives are also not permitted.*”

In summary the Tribunal concluded that the timing of the dates for the hearings did not give due consideration to Mr. McDonald's right to representation, nor did it ascribe to the principles of reasonableness.

The Tribunal also took note that Mr. McDonald's letter of dismissal spoke to breaches of the Bank's Code of Conduct, honouring of trust as well as disrespectful and inappropriate behavior. This suggested to the Members that these breaches were considered serious enough to warrant dismissal and should have been speedily addressed. With this in mind Members had difficulty in understanding why Mr. McDonald was allowed to continue on the job for over eight months after the first incident, over six months after the second, over five months after the third, fourth and fifth. The question therefore is when did the honouring of trust become a factor.

In addition, the evidence showed that Mr. McDonald had made allegations of corruption against Mrs. Coretta Russell Foster and Miss Nicole Roberts. Miss Roberts was the person who proffered the breaches and was named as the person who would be conducting the hearing. Mrs. Russell Foster was a part of the decision to dismiss Mr. McDonald and Miss Marcia Evans, who

was also a part of the decision to dismiss him, signed the letter of dismissal. In the opinion of the Tribunal based on the foregoing, it was difficult to rule out bias.

FINDINGS:

The finding of the Tribunal is that the procedure engaged in by the Bank in dealing with the alleged breaches of Mr. McDonald was flawed, and therefore his dismissal is unjustifiable.


AWARD:


In all the circumstances of this case and taking into consideration the welfare of all concerned, the Tribunal has decided not to order reinstatement as requested.

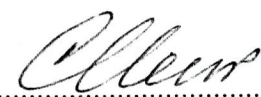
The Tribunal's Award is for Mr. McDonald to be compensated by the payment of eighteen months salary and allowances at the rate of which he was in receipt at the time of his dismissal, on account of the Bank's unjustifiable action in terminating his services.

DATED THIS 16 DAY OF OCTOBER, 2015

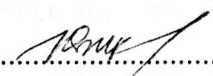



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Charles Jones, CD, JP.
Chairman


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Trevor Graham, JP.
Member


.....
Clinton Lewis
Member

Witness:


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Keisha Mighty-Brown (Mrs.)
Acting Secretary to the Division