

**4 Ellesmere Road
Kingston 10**

IDT 2/2021

March 22, 2022

Permanent Secretary
Ministry of Labour
1F North Street
Kingston

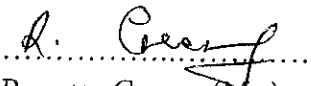
Attention: Mrs. Colette Roberts Riden

Dear Madam,

**Re: Dispute between Sagicor Life Jamaica Limited and Mr. Donovan Clarke over the
termination of his employment**

Enclosed, please see Award handed down by the Industrial Disputes Tribunal in connection with the captioned dispute.

Yours faithfully,


.....
Royette Creary (Ms.)
for Secretary/Director

Encl.

Similar letter sent to:

Hon. Minister of Labour	
Ms. Gillian Corrodus	– Director, Industrial Relations & Allied Services
Mr. Michael Kennedy	– Chief Director, Industrial Relations
Ms. Karlia Carty-Dinnall	– Attorney-at-Law
Mr. Emile Leiba	– Attorney-at-Law

RC/gp

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 2/2021

SETTLEMENT OF DISPUTE

BETWEEN

SAGICOR LIFE JAMAICA LIMITED

AND

MR. DONOVAN CLARKE

AWARD

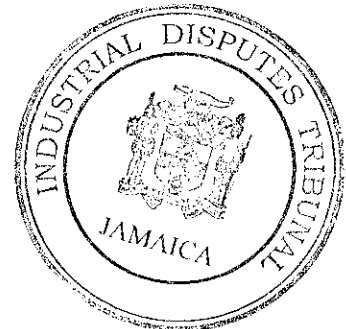
I.D.T. DIVISION

HON. MRS. JUSTICE MARJORIE COLE-SMITH (Ret'd.)- CHAIRMAN

MR. ERROL BECKFORD - MEMBER

MRS. CHELSIE SHELLIE-VERNON - MEMBER

MARCH 22, 2022



INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**SAGICOR LIFE JAMAICA LIMITED
(THE COMPANY)**

AND

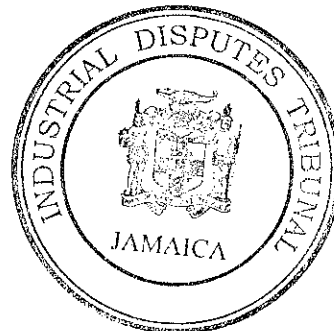
**MR. DONOVAN CLARKE
(THE DISMISSED WORKER)**

REFERENCE:

By letter dated April 19, 2021 the Honourable Minister of Labour and Social Security, pursuant to Section 11(1) 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 Sagicor Life Jamaica Limited on the one hand, and Mr. Donovan Clarke 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:

- | | | |
|------------------------------------------------|---|--------------------------------|
| Hon. Mrs. Justice Marjorie Cole-Smith (Ret'd.) | - | Chairman |
| Mr. Errol Beckford | - | Member, Section 8(2) (c) (ii) |
| Mrs. Chelsie Shellie-Vernon | - | Member, Section 8(2) (c) (iii) |

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

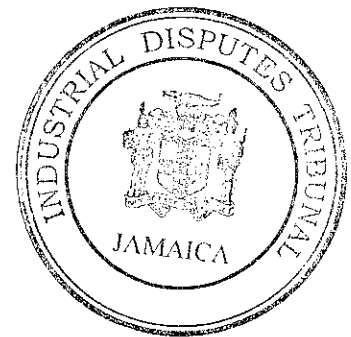
- | | | |
|----------------------------|---|------------------------------------------|
| Mr. Emile Leiba | - | Attorney-at-Law |
| Ms. Chantal Bennett | - | Attorney-at-Law |
| Mrs. Grace Royal-Bassaragh | - | Assistant Vice President, Legal Services |

The **Dismissed Worker** was represented by:

- | | | |
|---------------------------|---|-----------------|
| Ms. Victoria Brown | - | Attorney-at-Law |
| Mrs. Karlia Carty-Dinnall | - | Attorney-at-Law |

In attendance

- | | | |
|--------------------|---|------------------|
| Mr. Donovan Clarke | - | Dismissed worker |
|--------------------|---|------------------|



SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during ten (10) sittings held between June 30, 2021 and December 10, 2021.

BACKGROUND TO THE DISPUTE:

Sagicor Life Jamaica Limited (hereinafter referred to as the Company) is an incorporated Company which provides life and health insurance to individuals and corporate entities. The Company also provides pension products, investment products and creditor life and personal accident insurance to its clients.

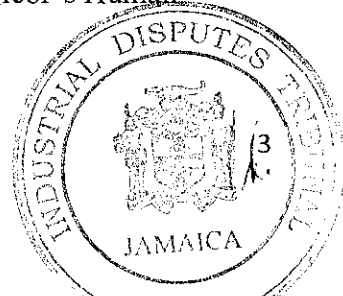
Mr. Donovan Clarke was initially employed to the Company in 1994 in the capacity of Accounting Clerk. Mr. Clarke worked in various capacities during his employment with the Company. His final position with the Company was an Accounting Clerk in the Cheque Disbursement Unit (CDU).

In April 2019 it was brought to the attention of the Management of the Company that payments were made against invoices for services which were not rendered. An investigation commenced and the persons involved in the processing of the invoices in question were interviewed. As a result of the investigation Mr. Clarke's services were suspended pending the outcome of the investigation. By way of letter dated October 22, 2019, Mr. Clarke was invited to a disciplinary hearing which resulted in the termination of his employment.

Mr. Clarke protested his termination and as a result the matter was ventilated at the Ministry of Labour and Social Security. There was however, no resolution reached at that forum and therefore the matter was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE:

1. In furtherance of their case, the Company called three (3) witnesses, Mrs. Grace Royal-Bassaragh, Assistant Vice President, Legal Services, Ms. Donna Thomas, Assistant Manager in charge of the Cheque Disbursement Unit and Ms. Loretta Foster, Vice President Group Human Resource.
2. On October 31, 2018, Mr. Clarke's Supervisor, Ms. Donna Marie Thomas transmitted, via email to him concerns about the collection of cheques belonging to vendors. A list of cheques which Mr. Clarke had collected from the CDU between January 2018 and October 2018 was also transmitted to him. Ms. Thomas indicated that this act of collecting cheques for vendors/payees was in breach of the Company's internal control procedure. Included in the list of cheques was cheque #1185 which was collected on January 12, 2018 on which a certain contractor was the payee.
3. It is the Company case that as a result of a random check made by the CDU Supervisor in October 2018, certain anomalies were observed which raised a red flag. The anomalies involved payments made against invoices for services which were not rendered.
4. It is the evidence of Ms. Donna Thomas that she considered Mr. Clarke as her right hand and he was dependable. He acted for her when she proceeded on vacation leave.
5. On July 8, 2019, Mr. Clarke was invited to a meeting with members of the Sagicor's Human

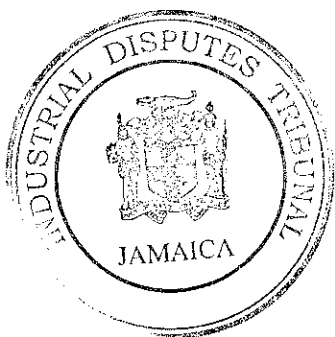


Resource Department to which his Union Delegate was present. He was advised that the Company was investigating a matter relating to cheques payable to third parties. Mr. Clarke was suspended with pay to facilitate the investigation. On August 12, 2019, a further meeting was held with Mr. Clarke and again his Union Delegate was present. This meeting was held with Sagicor Life Jamaica Limited Security Operations Department.

6. Mr. Clarke subsequently received a letter dated August 12, 2019 which outlined the findings of the investigation. He was asked to respond to the findings within three (3) days and advised that his suspension on full pay would remain in place. Mr. Clarke responded to the Company's findings on August 16, 2019 via email addressed to Ms. Norda Brown, HR Officer. In his response he admitted that he did sign for cheques for contractors which was provided to him in the list and he also responded to the findings of the investigations.
7. On October 1, 2019, Mr. Clarke received a charge letter which was later revised by way of letter dated October 22, 2019 from Ms. Loretta Foster. The letter invited Mr. Clarke to a disciplinary hearing to answer to five (5) charges laid against him. He was advised that he was permitted to have a representative of his choice present at the hearing. The charges outlined by the Company were as follows:

*"Breach of Sagicor Group Jamaica Human Resource Policy – 5.3.1 –
Disciplinary Code namely:*

Fidelity of Company



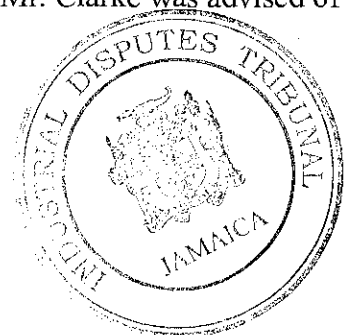
- *Willfully engaging in fraud of any nature including but not limited to falsification of Company documents, records or report, trafficking company trade secrets, loan of Health Card, misappropriation of funds, etc.*
- *Willfully acting outside the scope of authority, resulting in damage or loss to the company or team members.*

Details of Offence

- A. *Signing for cheques on behalf of third-party contractors without authority*
- B. *Collecting payments on behalf of the third-party contractors without authority*
- C. *Falsifying of Company records by signing cheques in the names of third-party contractors.*

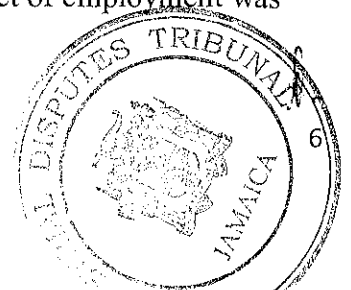
- D. Endorsing cheque by fraudulently signing the name of a third-party contractor on the back of the cheque.*
- E. Facilitating fraudulent activities resulting in loss to the Company by collecting cheques paid against fraudulent invoices for individuals who had either never done work for Sagicor or had not done it at the properties stated on the invoice.*

8. The hearing was held over the period October 7, 22 & 31, 2019 and November 11, 2019. Mr. Clarke was represented at the said hearing by Attorney-at-Law, Ms. Victoria Brown and the Company's Legal Counsel represented the Company.
9. The disciplinary committee was chaired by Mrs. Symone Mayhew, Q.C., Attorney-at-Law, along with the two (2) members, Mr. Karl Williams, Senior Vice President, Human Resources, Sagicor Life Jamaica Ltd. and Ms. Vinatte Hall, Chartered Accountant and Retiree of Sagicor Jamaica Ltd.
10. The Disciplinary Committee found that there was insufficient evidence to support charges A, B, C & E, but found that Mr. Clarke was liable for charge D. The Disciplinary Committee's conclusion was based on Mr. Clarke's admission to having endorsed the cheque issued by Sagicor to a third party contractor and the collection of \$300,000.00 from Sagicor Bank in respect of such cheque. The recommendation from the Committee was therefore for the termination of his services with immediate effect. It was held by the Disciplinary Committee that the employee's conduct affected the trust and confidence that a reasonable employer would have in him. The Disciplinary Committee provided a detailed report of their findings and the evidence they considered in reaching their decision to terminate Mr. Clarke.
11. Following the recommendation of the Disciplinary Committee a letter of termination dated November 18, 2019 was issued to Mr. Clarke who was afforded a right to an appeal. He appealed his termination and the appeal was heard by a panel consisting of Mr. Willard Brown, Executive Vice President, Employee Benefit Division and Mr. Mark Chisholm, Executive Vice President Line Division. The appeal panel upheld the decision of the Disciplinary Committee based on the evidence presented to them and by letter dated February 14, 2020, Mr. Clarke was advised of the Appeal panel's decision.



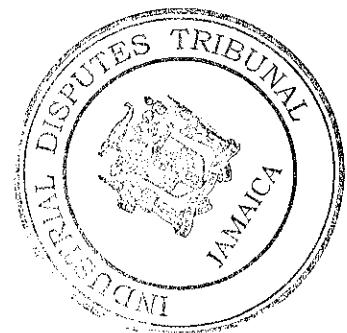
The Company contended that:

- 1) It has always dealt with its employees in a courteous, fair, respectful and professional manner which is in keeping with the requisite Labour Laws and policies governing employer/employee relationships. It is therefore the expectation of the Company that all employees similarly conduct themselves in a professional, respectable and courteous manner to maintain integrity at all times.
 - 2) Its relationship with Mr. Clarke spanned twenty-five (25) years and he was trusted with tasks which involved financial matters in the Company's Cheque Disbursement Unit. Mr. Clarke was given a warning letter for his initial action for operating contrary to the Company's rules. He subsequently conducted further actions contrary to the Company's rules when he collected a cheque from the Cheque Disbursement Unit and endorsed the cheque as "M Fenton" with a view to encashing same. Based on Mr. Clarke's experience and the task entrusted to him he was aware that falsely endorsing a cheque for payment from the Company to a third-party was not permitted.
 - 3) Mr. Clarke's repeated actions showed a flagrant disregard for the Company's rules and the specific conduct which led to his termination affected the trust and confidence which the Company is required to have in its employees. Employees working in a department connected to finance are held at a very high ethical standard and all employees are prohibited from willfully engaging in acts of fraud of any nature.
 - 4) Mr. Clarke was given an opportunity to be heard at the disciplinary hearing and during the hearing he admitted to falsely endorsing a cheque issued by his employer, to a third-party which resulted in an investigation.
 - 5) Mr. Clarke's legal counsel was present at the hearing and he was given the right to an appeal and at that forum where the decision of the Disciplinary Committee was upheld.
12. The Company therefore maintains its position that Mr. Clarke was properly terminated for cause and that all procedures were followed in accordance with the requirements of the Labour Relations Code. The Company submitted that the termination of Mr. Clarke's contract of employment was lawful, fair and justifiable.

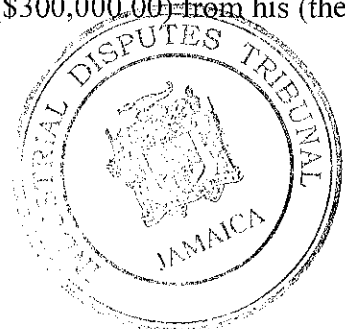


THE DISMISSED WORKER'S CASE:

13. Mr. Clarke was the sole witness in his case. He was employed to Sagicor Life with effect from 1991 to the time of his dismissal on November 22, 2019. He initially started as a Clerk in the Store Room and was later transferred to the Cheque Disbursement Unit in the position of an Accounting Clerk. He could not recall receiving a Job Description but testified that he was aware of and fully understood the procedures in the Department. His immediate supervisor was Ms. Donna Thomas. Her relationship as his supervisor spanned fifteen (15) years and during that time she gave him guidance and training relating to his functions in the unit.
14. On October 30, 2018, Mr. Clarke said he received an email from Ms. Donna Thomas indicating that whilst conducting a mini audit of the cheque delivery book she discovered that some vendors' cheques were collected by him for the period January 2018 through to October 2018. This action, she stated in the email, was without her knowledge or permission, which was a breach of the Company's internal control procedures. A list of the cheques signed by him was listed in the email and he was requested to provide evidence of instructions from the vendors to do so. This response was to be submitted no later than November 3, 2018. He responded to the email apologizing for his action and stated that he was trying to offer more direct services to the contractors. He promised that he would not sign for any cheques.
15. This prompted an investigation on a larger scale which brought to light that he had "signed" the name of a payee and received cash in the sum of three hundred thousand dollars (\$300,000.00) which he said he took to the contractor and this was done in January 2018.
16. As a result of the investigation, he was questioned on at least two occasions in the presence of his Union Delegate and at all times, he maintained that he committed no act of fraud. He said that he spoke the truth at all times to defend his action and his response to the email from Ms. Thomas was also the truth.



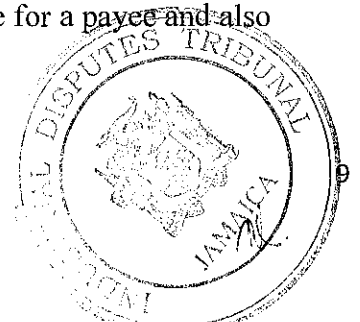
17. Mr. Clarke was suspended with pay pending an investigation. It is his evidence that he was escorted to his desk in the presence of his fellow co-workers, told to remove his personal belongings, hand over his ID card and he was not to return to work unless advised by HRD.
18. He subsequently received a letter from the HRD laying out charges against him and inviting him to a disciplinary hearing. Mr. Clarke along with his Attorney attended the disciplinary hearing where Sagicor's team was ready to start, having done no disclosure to Mr. Clarke. Disclosure was agreed and the hearing adjourned and set again for October 22, 2019. The meeting of October 22, 2019 was convened, however, it was revealed that the documents that were presented to them by Sagicor were incorrect. Another hearing date was set for October 31, 2019. The lone witness for Sagicor was a Handwriting Expert. Mr. Clarke was also called by his Attorney and he spoke freely. He was also questioned by the Disciplinary Panel and he answered the questions openly and honestly.
19. The Disciplinary Panel communicated their decision in a report produced by Mrs. Symone Mayhew, Q.C. who chaired the committee. The report recommended that Mr. Clarke's services be terminated as the Company had lost trust and confidence in him. The report also rejected the explanation given by Mr. Clarke for his involvement in the issue. The decision was appealed, however, the Appeal Committee upheld the decision.
20. Mr. Clarke through his Attorney submitted that he was penalized twice by the Company because he was given a warning by his immediate Supervisor, Ms. Donna Thomas in an email dated October 30, 2018. The explanation given by Mr. Clarke before the Industrial Disputes Tribunal was that on January 12, 2018, he was instructed by a contractor to collect a cheque on his behalf and to deposit the said cheque at the Sagicor Bank, Dominica Drive Branch. While he was in the Bank, he received further instructions via telephone call from the payee instructing him to make his way to the Office of the Manager of the Bank. He complied with the request and was escorted to her office as he had never met her before and did not know where her office was located. While he was in the Manager's office, the payee called her and he was privy to the exchange between them as the telephone was on speaker mode. The payee's instruction to her (Bank Manager) was that she should give Mr. Clarke the sum of three hundred thousand dollars (\$300,000.00) from his (the payee's) account.



21. It is Mr. Clarke's testimony that he was instructed by the Bank Manager to write on the back of the cheque the name of the payee and to proceed to a selected Teller which he did. He said that the Teller wrote up the deposit slip and gave it to him and he signed his name and returned it to the Teller who left and went to the Manager's office. On her return, he observed while the Teller counted the sum of three hundred thousand dollars (\$300,000.00), placed it in an envelope and gave it to him. This he testified was given to the payee after he left work.
22. Mr. Clarke stated that he is presently employed but would not say that he has mitigated his loss of salary from Sagicor Life as his salary fluctuates. He said that he too has lost confidence in Sagicor Life and is therefore seeking reinstatement and compensation for his time off the job. His termination, he said, was unjustified as he did nothing wrong.

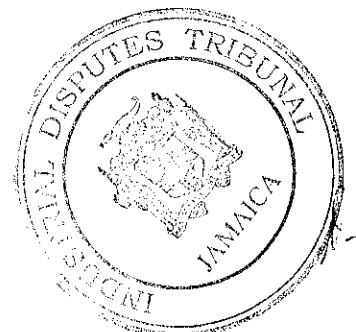
THE TRIBUNAL'S FINDINGS:

23. The Tribunal must ask itself two (2) questions in order to determine and settle this case:
1. Did Mr. Clarke's actions amount to a breach of the Company's policies and procedures?
 2. Was the decision by the Company to terminate Mr. Clarke's contract just and fair?
24. The Tribunal is in agreement with the decision of the Disciplinary Panel to dismiss charges A, B, C, and E because of insufficient evidence. As it relates to A, the undisputed evidence before the Tribunal is that Mr. Clarke ceased signing for cheques on behalf of third party contractors after he received the warning from his Supervisor, Ms. Donna Thomas in October 2018.
25. As it relates to B and C, the Tribunal finds it quite interesting that the Company having submitted the Handwriting Expert's Report in evidence, did not call upon him as a witness. The evidence presented by the Company to support these charges were therefore not sufficient.
26. In relation to charge E – there was no evidence by the Company to substantiate that Mr. Clarke facilitated fraudulent activities resulting in a loss to the Company.
27. As it relates to charge D - Mr. Clarke by his own admission committed a dismissible offence. Mr. Clarke, in his evidence, agreed that a third party cannot endorse a cheque for a payee and also



confirmed that the cheque collected by him for the contractor on January 12, 2018 was endorsed by him, notwithstanding him saying that he later discovered that it was wrong. This offence committed by Mr. Clarke was a serious breach, one that could have exposed Sagicor Life Jamaica Limited to liability.

28. Mr. Clarke through his Attorney submitted that he was already penalized and cannot therefore be penalized a second time for the same offence. It is to be noted that Mr. Clarke was not disciplined twice for the same offence as he would have liked the Tribunal to believe. What Ms. Donna Thomas wrote Mr. Clarke about was the collection of cheques for some vendors between January to October 2018.
29. One of Mr. Clarke's roles was to dispatch cheques which are convertible to cash to the relevant payees, making the employees in the Cheque Disbursement Unit (which Mr. Clarke is a part of) responsible for the finances of Sagicor Life Jamaica Limited. It is quite evident that Mr. Clarke's action was in direct conflict with his roles and responsibilities as well as in contravention of Section 5.3.1 of the Company's Disciplinary Code. Mr. Clarke's action would therefore result in the Company losing trust and confidence in him.
30. Mr. Clarke in his evidence did not allude to affixing the payee's name to the cheque under duress from neither the payee nor the Branch Manager. Given Mr. Clarke's many years in the Cheque Disbursement Unit, he ought to be fully aware of how to deal with the issue of cheques in general. Therefore, the Tribunal does not accept Mr. Clarke's evidence that he was instructed by the payee and or Sagicor Branch Manager to participate in such an act.
31. As it relates to the second question above, based on the evidence provided by both parties, it is abundantly clear that Section 22 of the Labour Relations Code which outlines the requirements for disciplinary procedure were adhered to by the Company.
32. The evidence before the Tribunal is that a charge letter was given to Mr. Clarke and that at least two (2) investigative meetings were held with him prior to the charges being laid. Mr. Clarke was



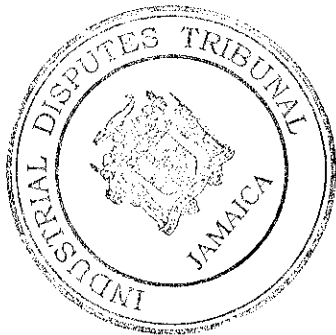
afforded representation prior to and at the Disciplinary Hearing and at the Appeal. The members of the Appeal Committee were never involved in any disciplinary stages prior to the appeal. Mr. Clarke in evidence stated that he had no problem with the way in which the hearings or the appeal were conducted.

33. In light of the above, the Tribunal awards as follows.

THE AWARD:

34. The Tribunal, therefore, finds that the termination of Mr. Donovan Clarke's contract of employment by Sagicor Life Jamaica Limited was justifiable.

nd
DATED THIS 22 DAY OF MARCH 2022



Justice Marjorie Cole-Smith (Retd.)
Chairman

Errol Beckford
Member

Chelsie Shellie-Vernon
Member

Witness:

Royette Creary (Miss)
Secretary to the Division