

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 20/2022

SETTLEMENT OF DISPUTE

BETWEEN

SPECTRUM SYSTEMS LIMITED

AND

MS. JHEANELLE MYERS

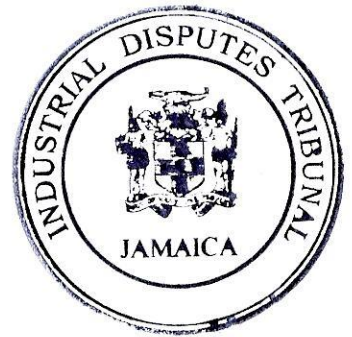
AWARD

I.D.T. DIVISION

| | | |
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| MR. DONALD ROBERTS, CD., JP. | - | CHAIRMAN |
| MRS. JACQUELINE IRONS, JP. | - | MEMBER |
| DR. DENESE MORRISON, JP. | - | MEMBER |

SEPTEMBER 13, 2023

INDUSTRIAL DISPUTES TRIBUNAL
AWARDS
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
SPECTRUM SYSTEMS LIMITED
(THE COMPANY)
AND
MS. JHEANELLE MYERS
(AGGRIEVED WORKER)



REFERENCE

By letter dated July 12, 2022, the Hon. Minister of Labour and Social Security, pursuant to Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act, 1975 ("the Act") referred to the Industrial Disputes Tribunal ("Tribunal") for settlement, the dispute between **Spectrum Systems Limited** and **Ms. Jheanelle Myers** with the following Terms of Reference: -

"To determine and settle the dispute between Spectrum Systems Limited on the one hand and Ms. Jheanelle Myers on the other hand over the termination of her employment"

DIVISION

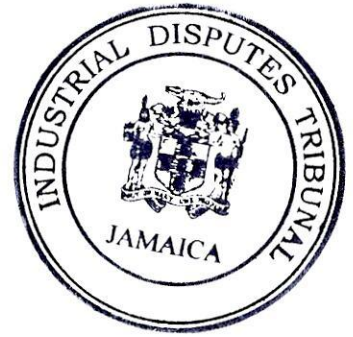
The division of the Tribunal selected in accordance with Section 8(2)(c) of the Act to hear the matter comprised:

Mr. Donald Roberts, CD, JP - Chairman
Mrs. Jacqueline Irons, JP - Member, Section 8(2)(c)(ii)
Dr. Denese Morrison, JP - Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

| | | |
|---------------------|---|-------------------|
| Mr. Kent Gammon | - | Attorney-at-law |
| Mr. Andrew Stanigar | - | Managing Director |



The **Aggrieved** was represented by:

| | | |
|---------------------|---|---------------------------------|
| Mr. Garfield Harvey | - | Industrial Relations Consultant |
|---------------------|---|---------------------------------|

In attendance:

| | | |
|---------------------|---|-------------------------------------|
| Ms. Jheanelle Myers | - | Aggrieved worker |
| Miss Kemise Jarrett | - | Sales & Customer Service Supervisor |

SUBMISSIONS AND SITTINGS

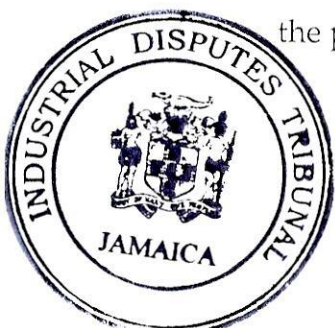
The parties submitted briefs to the Tribunal and made oral presentations over fifteen (15) sittings covering the period October 18, 2022 through to July 31, 2023. Over the course of the sittings, the Tribunal, in addition to the oral evidence also examined twenty-two (22) exhibits.

BACKGROUND TO THE DISPUTE

1. The employer, Spectrum Systems Limited was incorporated in Jamaica in 1997 with its main offices at 455-457 Spanish Town Road in Kingston. It installs and repairs commercial/industrial roofs island-wide, to include product offerings, system and accessories. The employee, Ms. Jheanelle Myers, was employed to Spectrum Systems Limited as a Sales & Administrative Assistant with effect from February 1, 2021. She was confirmed in the position on May 10, 2021 following the satisfactory completion of her three-months' probation. She was to report to the Ms. Kemise

Jarrett, Sales Supervisor, as well as work closely with the Senior Manager, Miss Patricia Green.

2. On August 10, 2021, Mr. Horace Wiltshire, Project Manager at the Company, in an email to Miss Patricia Green, informed her that he has been receiving reports regarding Ms. Myers' poor attitude in dealing with customers and her peers. He suggested that she be assigned other duties, and would not wish for her services to be terminated.
3. On November 4, 2021 Ms. Myers received 'a letter of reprimand' from the Company's Managing Director, Mr. Andrew Stanigar, regarding her continued poor behaviour and indicating that any future report would likely result in her suspension.
4. On November 18, 2021, her supervisor, Ms. Kemise Jarrett, emailed Mr. Stanigar reporting an incident involving Ms. Myers which took place on November 11, 2021 in the main sales office. She regarded Ms. Myers' behaviour towards her as "*rude and obnoxious*", and requested that this and other issues be resolved as soon as possible.
5. Mr. Stanigar wrote to Ms. Myers on December 1, 2021, referencing his letter of November 4, and indicated that there are documented instances of her "*gross insubordination, disrespectful and crass behaviour.*" He pointed to his earlier written warning and the decision, based on another infraction, to suspend her for one week without pay commencing on the date of the letter.
6. On December 8, 2021 Ms. Myers was invited to a disciplinary hearing vide a memorandum under the signature of the Managing Director. The scheduled date for the disciplinary hearing was Friday, December 17, 2021 at which Ms. Myers was to answer to charges of gross insubordination and intimidation of co-workers over the period May 1, 2021 to December 1, 2021.

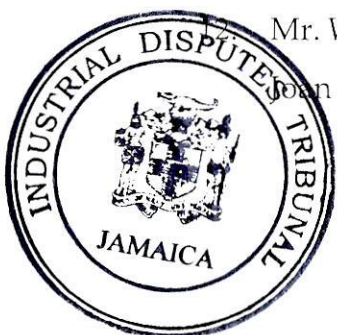


7. The Disciplinary hearing was held and concluded that her services should be terminated. Mr. Stanigar wrote to her on December 19, 2021 terminating her services with immediate effect.
8. Mr. Garfield Harvey, industrial relations consultant, acting on behalf of Ms. Myers, challenged the decision of the company to terminate her services. Nothing came of the appeal and the dispute was referred to the Ministry of Labour and Social Security for conciliation. The efforts were, however, unsuccessful, and by letter dated July 12, 2022, the Minister of Labour and Social Security, pursuant to his powers under section 11 of the Labour Relations and Industrial Disputes Act (LRIDA), referred the matter to the Industrial Disputes Tribunal for settlement.

THE COMPANY'S CASE

9. Counsel for the company said that Ms. Jheanelle Myers had a series of infractions which resulted in her suspension on December 1 and again on December 8, 2021 for gross insubordination and intimidating co-workers. He made reference to the memorandum of December 8, 2021 inviting her to a disciplinary hearing via zoom to answers to the charges, and indicated that she was advised of her right to be represented.
10. Counsel added that despite the "*more than reasonable notice*" for the hearing, which was acknowledged by Ms. Myers' representative, and subsequent reminders, neither Ms. Myers nor her representative attended the hearing.
11. The company's first witness was Mr. Lorell Walters, general manager at the Port Spectrum Division. Mr. Walters said the company saw it fit to have a staff representative, and he was elected by the employees as the staff representative a few months before the disciplinary hearing of December 17.

Mr. Walters identified the persons present at the disciplinary hearing to include Mrs. Joan Lewinson, chairperson, Mr. Kent Gammon, Ms. Devi Brown, Mr. Andrew



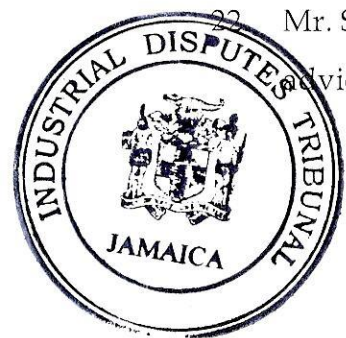
Stanigar and himself. He said the disciplinary committee met on December 17, 2021, looked at the documents presented and had deliberations as to the way forward. He said that in the end, members were asked to state their position on the matter and they unanimously decided that Ms. Myers' services should be terminated.

13. Mr. Walters said that Ms. Myers' performance for the period February to April 2021 was good, which led to the company confirming her in the position. He conceded that at the time of Ms. Myers' dismissal the company did not have a HR Officer, and that matters relating to HR was dealt with by Ms. Green. Mr. Walters said that he cannot recall Ms. Green being involved in the process leading to the disciplinary hearing, but 'three persons plus Ms. Lewinson were involved.'
14. Mr. Walters testified that the basis on which the committee made its decision was primarily by way of an examination of the documents presented. He acknowledged that no witnesses were called by the committee. He admitted, under cross-examination, that the memo of December 8 did not reflect any infraction occurring on that date although the company's brief indicated that the disciplinary hearing for Ms. Myers was called "*...after yet another disciplinary infraction at the workplace on the 8th December, 2021.*"
15. Mr. Walters said that Ms. Myers' suspension of December 1, 2021 was prompted by the infraction which occurred on Thursday, November 11, 2021, as indicated in the letter from the managing director, and seems to include previous infractions of May/June and October 23, 2021. He admitted that the hearing letter included alleged charges for which Ms. Myers was previously suspended.
16. In further re-examination by counsel, Mr. Walters intimated that the disciplinary committee also considered reports made about Ms Myers intimidation of staff members and her general bad behaviour on the day of her return to work after the expiration of her one-week suspension.



17. The company's second witness was Mr. Andrew Stanigar, the managing director. He said Ms Myers was introduced to him by Ms Jarrett at a social function. She was at the time unemployed and he requested of her to send a resume to him for employment. Mr. Stanigar said that Ms. Green reviewed the job application, but recommended against her being employed.
18. Mr. Stanigar said he began receiving complaints about Ms. Myers' attitude and behaviour from Ms. Jarrett and Mr. Wiltshire, as well as complaints from customers. He said despite the negative reports, he was not giving up on her and decided to shift her to the Inventory Division *"to keep her engaged and employed."*
19. On November 18, 2021 Mr. Stanigar said he received another complaint from Ms. Jarrett about Ms. Myers' behaviour regarding an incident on November 11 in the main sales office. He then wrote to her on December 1, 2021 suspending her from duties for one week without pay. The ultimate paragraph in the letter from Mr. Stanigar formally recommended that she *"immediately submit [her] resignation..."* as her unacceptable behaviour puts her *"... on a clear path to lawful dismissal in the near future..."*, and *"... it would be in everyone's best interest for [her] to not return to work here."*
20. Further in his testimony, Mr. Stanigar said he received an email from Mr. Horace McCook, dated November 24, 2021 about Ms. Myers' inability to grasp certain aspects of the work in the inventory area, including the use of the Microsoft Excel/Sage that deals with reporting.
21. On December 8 Mr. Stanigar said he received complaints that Ms. Myers was going around disrupting the operations and claiming that she was being victimized. He said he later received a call from Ms. Jarrett asking that Ms. Myers be removed from her office *"... as the possibility of a physical confrontation could occur."*

22. Mr. Stanigar admitted that he was at his 'wit's end' and called Mr. Gammon for his advice. It was decided to suspend her again, with pay, *"to preserve good order and*



peace" and set up a disciplinary hearing chaired by an independent party in the person of Mrs. Joan Lewinson to look into the alleged infractions.

23. It was Mr. Stanigar's testimony that there was no disciplinary hearing held prior to Ms. Myers' suspension on December 1, 2021.
24. The Tribunal agreed to suspend the cross examination of Mr. Stanigar's to accommodate the company's third witness, Mrs. Joan Lewinson. Mr. Stanigar would then be invited to resume his testimony at the completion of Mrs. Lewinson's.
25. Mrs. Lewinson is a retired professional in human resource management. She said her experience in dealing with industrial relations' matters stemmed from her 24 years' experience at Red Stripe, and the last ten years as Human Resource Manager at Restaurant of Jamaica Limited.
26. Mrs. Lewinson testified that when the disciplinary committee met on December 17, 2021 they were basically looking at Ms Myers' behaviour during the period of her employment at Spectrum, and recalled the committee reviewing a number of documents. She attested that the panel recommended that Ms. Myers' services be terminated 'because of all the disciplinary issues which came up during the period of her employment'. She said the panel was of the view that despite Spectrum's efforts with Ms. Myers "*...there was no improvement on her part and it was obvious that she was not getting better but repeating the same mistakes.*"
27. Mrs. Lewinson said she thought the disciplinary hearing was fair 'in the round', and her only concern was with the absence of Ms. Myers from the hearing. She noted that Ms. Myers was given sufficient notice for the hearing and that the panel received no communication from her or her representative regarding the reason for their absence.
28. In responding to questions under cross-examination regarding Mr. Stanigar's role at the disciplinary hearing, Mrs. Lewinson said that Mr. Stanigar was not a member



of the panel, was not a witness, and took no part in the proceedings. He was there to observe as the managing director.

29. Mrs. Lewinson admitted that none of the persons who made allegations against Ms. Myers was called as a witness; she said that in the interest of justice it would have been fair to hear from those persons who alleged wrongdoings on the part of Ms. Myers. She conceded that "*it was not wise*" to have included the last paragraph in the December 1 letter from Mr. Stanigar, with the recommendation that Ms. Myers resign from the company.
30. At the 5th sitting held on February 13, 2023, Counsel for the company informed the Tribunal that Mrs. Lewinson would not be available to continue her cross-examination for the period leading up to March 19 as she would be travelling. He was, however, prepared to end her testimony as a witness and recall Mr. Stanigar for the continuation of his cross examination. Mr. Harvey did not raise an objection in respect of his inability to complete the cross-examination of Mrs. Lewinson.
31. Mr. Stanigar resumed his testimony under cross examination from Mr. Harvey. He acknowledged that it was he who provided Mr. Gammon with all the relevant documents for the hearing. He said he 'doesn't recall speaking much at the hearing.'
32. The matter of alleged fraud on the part of Ms. Myers was raised in connection with her alleged claim for a commission arising from the accounts of a client, Mrs. Ann-Marie Facey. Mr. Stanigar explained that the procedure for claiming the commission would have been triggered if Ms. Myers was the one who introduced Mrs. Facey to Spectrum. He asserted that this was not the case as Mrs. Facey met Ms. Myers for the first time during her transaction at Spectrum Systems Limited. Mr. Stanigar said he has evidence in the form of an email from the sales supervisor that Ms. Myers submitted a claim for commission contrary to the policy.

Mr. Stanigar said that he cannot recall if there were documentary evidence of 'gross insubordination, disrespectful and crass behaviour' relating to Ms. Myers. He

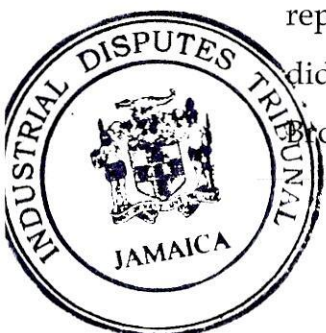


denied that the disciplinary hearing necessarily included all the infractions for which she was previously punished and noted that she had *"committed several infractions over time."* Mr. Stanigar said he believed the company treated the matter of Ms. Myers' dismissal fairly.

34. In the re-examination of Mr Stanigar the Tribunal agreed to admit into evidence three documents, namely: an invoice from Jheanelle Myers, dated October 6, 2021, regarding items sold to Mrs Ann-Marie Facey to the value of \$2,039,806.53; an email from Ms. Kemise Jarrett to Mr. Andrew Stanigar dated October 14, 2021 re: Request for staff commission; and email from Ms Kemise Jarrett to Mr. Stanigar, dated October 23, 2021 re: Request for staff commission. Mr. Harvey was given the opportunity to cross-examine Mr. Stanigar at the end of the re-examination.

THE AGGRIEVED WORKER'S CASE

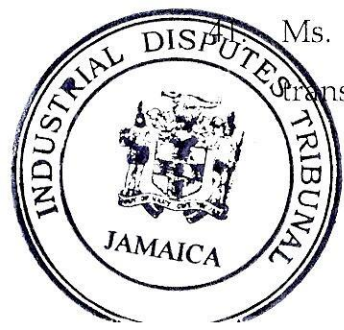
35. Mr. Harvey, in presenting the case for the dismissed worker, contended that the company had no probable reason to dismiss Ms. Myers because she had already been punished for the same offence previously. He described as 'red herring' the arguments proffered by the company about her poor behaviour and alleged fraud, and asked the Tribunal not to accept as proper and fair that a worker who has been disciplined by way of suspension, could, for the same offence, be terminated.
36. Ms. Myers testified in her own defense. She said her daughter and Ms. Jarrett's attended the same school, and she first met Ms. Jarrett at a birthday party she hosted for her daughter sometime in December 2020. She was also introduced to Mr. Stanigar the same night of the party, although he was attending a different function at the location.
37. Ms. Myers said she was told by Ms. Jarrett that Spectrum needed a sales representative and that she should submit a resume for consideration, which she did. In January 2021 she was invited to a job interview with Ms. Green and Ms. Devi Brown. She received an offer letter dated January 20, 2021 for the position of sales



and administrative assistant commencing on February 1, 2021. The offer letter stated her net salary as \$80,000.00 per month, and advised that she would become permanently employed if she successfully completed her three months' probation.

38. Ms. Myers noted that her first performance appraisal was done in May, at the end of her probationary period, which she described as 'good'. On May 11, 2021 she received a letter from Ms. Green confirming her permanent appointment with effect from May 10, 2021 after the satisfactory completion of her probation. She highlighted the section of the appraisal under '**performance summary**', which noted her '**strongest points**' as her *"ability to grasp thing easily, her eagerness to learn and her humility towards constructive criticism."*
39. Further in her testimony Ms Myers said she observed a change in Ms. Jarrett's attitude towards her around mid-May, early June. She believed what caused the change in attitude was personal and not work related as she had refused several invitations from Ms. Jarrett to take her home or pick her up on her way to work. She had also not taken late night calls from Ms. Jarrett, and had not accepted any of her social invitations. She said Ms. Jarrett knows that she is a lesbian and on several occasions would flirt with her, including calling her in her office to 'chit chat' about matters unrelated to work. Ms. Myers said all of this made her uncomfortable.
40. Ms Myers, in responding to questions about the August 10, 2021 email from Mr. Wiltshire regarding her attitude towards a customer, said she was surprised by Mr. Wiltshire's email as he had personally commended her for 'not responding to the boisterous attitude of the customer'. However, under cross-examination, Ms. Myers acknowledged there were two incidents between herself and customers referenced in the August 10 email, and admitted that Mr. Wiltshire spoke to her about her attitude as stated in paragraph 2. [See exhibit 5]. She said she did not apologise for the incident or her attitude relating to the altercation with the customers.

Ms. Myers denied that she made any claim for a commission involving the transaction with the customer, Mrs. Ann-Marie Facey. She maintained that she



brought Mrs. Facey to Spectrum, whom she knew through her (Mrs. Facey) husband. She said Mrs. Facey called her wanting to do business at Spectrum and she advised her that she would need to open her own account, notwithstanding the fact that her husband holds an account at the company.

42. Ms. Myers told the Tribunal that she enquired of Ms. Brown whether a claim for commission could be made on the transaction with Mrs. Facey to which, she said, Ms. Brown, affirmed but said she should first speak to Ms. Jarrett as there were changes on how the commission should be paid.
43. Ms. Myers said she spoke to Ms Jarrett about the commission but did not complete any paperwork. She denied that the original invoice seeking to claim a commission was torn up by her in Ms. Jarrett's presence, but conceded that she tore up a blank claim form as she was angry and believed Ms Jarrett was denying her claim for a commission. She admitted going to Ms. Jarrett's office and calling her a liar and stating that she was 'vindictive' and "has been fighting her" in the organisation.
44. In respect of the incident occurring on November 11, 2021, for which she was suspended, Ms. Myers acknowledged an incident occurring in the main sales office in which she confessed that she hissed her teeth after Ms. Jarrett spoke with her, but denied that she used the word "nuff" or "bitch" at any time during the incident.
45. Ms. Myers further confessed during cross examination that she was angry with Ms. Jarrett who she believed was responsible for her suspension, but rebutted the argument that on the day of her return to work on December 8 her responses to enquiries from her co-workers about the suspension caused disruption to the organisation, and that she had set about slandering Ms Jarrett.
46. Regarding her employment record after her termination at Spectrum Systems, Ms. Myers agreed with counsel that she misled the Tribunal in not admitting that she worked at 'Our Place Restaurant' for a period. At the time of her testimony in May



2023, Ms Myers said she has been working at Island Vibes for the past three to four months.

ISSUES

47. The issues for determination by the Tribunal are:
- A. How to treat with the testimony of Mrs. Lewinson, the chairperson of the disciplinary committee, in light of the fact that she did not complete her cross-examination.
 - B. Whether the company had probable cause to have taken disciplinary action against Ms Myers, and if so, was a fair procedure adopted in her termination;
 - C. The role of the Managing Director, Mr. Stanigar in the process leading up to and including the decision to terminate Ms. Myers, and whether such role was prejudicial.

ANALYSIS AND FINDINGS

48. In examining the issues, the Tribunal relied on the evidence provided, both *viva voce* and documentary, and the relevant legal principles recognised by statute and the common law. We advert to the dicta of Rattray J, in one of his seminal contributions to the development of the common law set out in the Grand Lido case, where he said:

"The Act, the Code and the Regulations ... provide the comprehensive and discreet regime for the settlement of industrial disputes in Jamaica...", [and that the Act itself] "is not a consolidation of existing common law principles in the field of employment. It creates a new regime with new rights, obligations and remedies in a dynamic social environment radically changed, particularly with respect to the employer/employee relationship at the workplace, from the pre-industrial context of the common law."



49. In that regard, we remain mindful that the Labour Relations & Industrial Disputes Act takes precedence over existing common law principles in determining and settling disputes before the Tribunal.

How to treat with the testimony of Mrs. Lewinson, the chairperson of the disciplinary committee in light of the fact that she did not complete her cross-examination.

50. Mrs. Lewinson, the chairperson for the disciplinary panel, did not complete her testimony. Counsel for the company indicated during the middle of her cross-examination that she would not be available for an extended period and the company would wish to move on with its case. There was no objection from Mr. Harvey and no argument raised as to how we should treat her incomplete testimony.
51. Both parties, in fact, relied on Mrs. Lewinson's testimony during their closing submissions, and particularly for the aggrieved worker, the probative value of Mrs. Lewinson's evidence appeared not to have been lost, notwithstanding the incompleteness of the cross-examination. The Tribunal accepts therefore that there is no need for the preclusion of her testimony from consideration.

Whether the company had probable cause to have taken disciplinary action against Ms Myers, and if so, was a fair procedure adopted in her termination

52. The direction of counsel's closing submission makes it necessary at the outset to state that the Tribunal ought not to direct itself to the lawfulness or wrongfulness of the termination. That is for a court to decide. We understand our role not to be that of an appellate body or a review body, but as a 'finder of fact' based on our own original jurisdiction. As Brooks, J. succinctly puts it in the UTech case -

"the IDT is entitled to take a fully objective view of the entire circumstances of the case before it, rather than concentrate on the reasons given by the employer. It is to consider matters that existed at the time of



dismissal, even if those matters were not considered by, or even known to, the employer at that time"

53. The evidence before us is that Ms. Myers was written to on December 8, 2021 by Mr. Stanigar, inviting her to a disciplinary hearing scheduled for Friday, 17th December, 2021 at 10:00 am via zoom. The charges against Ms. Myers were set out as: "(i) gross insubordination (ii) intimidating co-workers over the period 01st May 2021 to 1st December 2021." The relevant contents of the letter are reproduced below:



"... In May/June 2021 you engaged in very disrespectful behaviour towards your Supervisor, Miss Kemise Jarrett. You admitted that you behaved in a disrespectful and inappropriate manner to her and in front of customers in the Sales Office to which you were reprimanded. You, the Supervisor and the Managing Director met in the office on June 7, 2021 and this incident was discussed and you apologised for your behaviour. You were verbally warned about such behaviour and advised that you would be suspended if there was a repeat of such behaviour. There was a repeat of such behaviour on 23rd October 2021 and 11th November 2021 and you were suspended." [Tribunal's emphasis]

54. Although the second charge spoke to 'the intimidation of co-workers over the period 01st May to 01st December, 2021,' only the incident involving Ms. Jarrett on October 23, 2021 was mentioned.
55. In her testimony, Mrs. Lewinson said that the disciplinary panel looked at Ms. Myers' behaviour "*over the period of her employment*", and took note of the company's effort to work to improve her attitude and behaviour. Both Mrs. Lewinson and Mr. Walters said that no witnesses were called to substantiate any of the allegations.
56. The 'gross insubordination' charge covered incidents occurred in May/June of 2021, for which, according to the charge letter, she was warned. There was a repeat of the behaviour on October 23 and November 11, 2021, and according to the December 8 letter, she was suspended. 'Warnings' and 'suspensions' are disciplinary measures appropriate for less egregious misconduct. An employee will not generally expect to be disciplined twice for the same offence, and where it occurs it is deemed an abuse of process.

57. To be clear, they are exceptions where the employer is able to bring new, significant and relevant evidence, or evidence to suggest that the initial punishment was grossly irrational in light of the evidence produced, and in those circumstances re-hearing the matter would not be in breach of the 'double jeopardy rule.'

58. In fact, as late of March of this year, the Labour Court of South Africa asserted that:



*"The defence of double jeopardy derives from criminal law and provides that an accused person cannot be tried twice for the same offence. In an employment context, the defence is to the effect that once an employer has imposed a sanction or a disciplinary penalty, the matter may not be re-opened to allow the employer the opportunity to revise the penalty, and in particular, to impose a more severe penalty"*¹

59. Spectrum management fell into grave error when, without any new or compelling evidence, it set about to discipline Ms. Myers for the same offence. Counsel would well appreciate the employee's right to mount a defense in the employment context based, as it would be, on the more familiar principle of *autrefois convict*, commonly known in criminal law.

60. The substantive issue, it should be noted, which the disciplinary panel addressed its mind to was whether or not Ms. Myers was *"in breach of the disciplinary infractions as set out in the memorandum dated 08th December 2021."* The further evidence - reiterated in counsel's closing submission - was that *"the Disciplinary Committee heard evidence that on the 08th December 2021 the employee had caused yet again another disturbance at her place of work by acting inappropriately in going to various employees complaining in a disruptive way that she was being unfairly treated"*

61. The report noted that the committee relied on the documents provided during the hearing which, it said, amounted to *"clear and unequivocal acts of gross insubordination and acts of intimidation."* The Committee also heard evidence concerning the incident on December 8. Mr. Stanigar admitted to viewing the CCTV footage and concluding

¹ See SAMWU OBO A N MALATSI V. South African Local Government Bargaining Unit, et.al., case No. JR 1211/2018, delivered on 13 March 2023

that Ms. Myers' behaviour was disruptive on that day. Based on the evidence, it would be hard to believe that Mr. Stanigar, armed with the belief that Ms. Myers' behaviour was 'disruptive' on the day, and having regard to the issue being considered by the disciplinary committee, would remain silent even as an observer.

62. As the committee's report noted "evidence" was adduced in relation to the incident on December 8, the conclusion, therefore, could reasonably be drawn that Mr. Stanigar would have given an account of what he witnessed from the footage. He would have participated in the proceedings. In fact, contrary to counsel's assertion that he remained silent throughout the proceedings, Mr. Stanigar convinced the Tribunal that he did participate in the proceedings, although he 'did not contribute much'.

63. Further, counsel informed us that the disciplinary committee referenced the Supreme Court case involving Owen Reid v. Diversity Lever (Jamaica) Limited as the putative authority upon which it anchored its decision. The relevant dictum offered in support of its conclusion was that -



"the application of the principles of natural justice in the instant case is without foundation as the relationship between the plaintiff and the first defendant is that of master and servant... and the plaintiff conduct was so insulting and insubordinate as to be incompatible with the continuance of the relationship of employer and employee..." [Tribunal's emphasis]

64. The case cited by counsel betrays a mindset trapped in a time capsule of the past. The Jamaican jurisprudence has long exorcised the ghost of the master and servant to a more mutually respectful and balanced relationship between employer and employee. Rattray, J. in the Grand Lido case puts it eloquently when he said -

"The Act, the Code and Regulations therefore provide the comprehensive and discrete regime for the settlement of industrial disputes in Jamaica. It is within the context of this regime that we must examine the submissions of counsel for the appellant in regard of the effect of the common law on the decision of the Industrial Disputes Tribunal. The relationship between employer and employee confers

status on both persons employed and the person employing. Even by virtue of the modern change of nomenclature from master and servant to employer and employee there is a clear indication that the rigidities of the former relationships have been ameliorated by the infusion of a more satisfactory balance between the contributors in the productive process and the creation of wealth in the society. The need for justice in the development of law has tested the ingenuity of those who administer law to humanise the harshness of the common law by the development of the concept of equity. The legislators have made their own contribution by enacting laws to achieve that purpose, of which the [LRIDA] is an outstanding example. The law of employment provides clear evidence of a developing movement in this field from contract to status. For the majority of us in the Caribbean, the inheritors of slave society [which was bred on violence, rape, torture, murder, unfairness and institutionalised oppression based on race, class and socio-economic status] the movements have been cyclic – first from the status of slave to the strictness of contract, and now to an accommodating coalescence of both status and contract, in which the contract is still very relevant though the rigidities of its enforcement have been ameliorated. To achieve this Parliament has legislated a distinct environment including the creation of a specialised forum, not for the trial of actions but for the settlement of disputes.”

65. It is that concept of equity, rooted in the common law principle of ‘fairness’ that we are obliged to discharge as our jurisdictional responsibility under the statute. In that regard, we are entitled to determine what we consider to be ‘fair’ and to rely on what we believe to be normative praxis in matters of disciplinary procedures.
66. To properly understand the state of the statute and the code in our jurisdiction, the social, economic and political influences that have shaped the development of our labour laws are equally important. Justice Rattray again exhorted us to remember those influences in an article on Labour Law and Statutory Arbitration in the Caribbean’, where he said:

“The history of slavery, the relationships between the owners and the owned, the bitter struggles which led to emancipation, the post abolition



interface between the former slaves (the workers) and their former owners (the employers) all provided a background for the emergence of labour laws and employment practices in Jamaica.”²

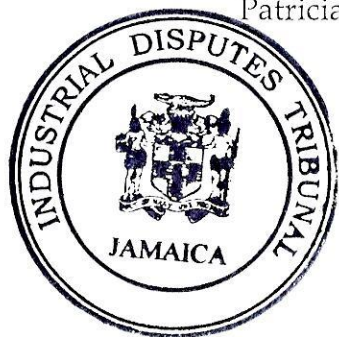
67. The LRIDA was set up to correct the mischief inherent in the past, and the Labour Relations Code remains the fountain from which our notion of fairness eternally springs and the application of the principles of natural justice are forever applied. In this case Ms Myers, should, in accordance with paragraph 22(b) of the Code, be clear as to the matter giving rise to the disciplinary action; and she was not. Mrs. Lewinson, the chairperson of the disciplinary panel, conceded that the members considered much more than was stated in the charge letter, confessed that *“in the interest of justice”* it would have been fair to hear from the persons alleging misconduct, and that it was prejudicial to have included the paragraph in the December 1 letter to Ms. Myers about resigning.
68. In the notes of the hearing tendered into evidence [exhibit 11] the disciplinary hearing lasted one hour and forty minutes. Ms. Myers and her representative were absent although they were given sufficient notice and timely reminders about the hearing. Mr. Harvey had in fact responded to Mr. Stanigar’s letter of December 8 while stating that: (a) Ms. Myers *“is being suspended with immediate effect for gross insubordination and intimidating co-workers;”* and (b) requiring her *“to attend a hearing via ZOOM to explain and address each allegation brought against [her]”*.
69. On the face of it, the employer’s conduct in handling the matter may have given cause to the belief that the rules of natural justice were being vitiated, since the suspension is determinative of her guilt even before the hearing. We, nevertheless, cannot condone the cavalier approach taken by Mr Harvey on behalf of his client, for it undermines the very process his action was intending to uphold.



² See Cowell, N and Branche, C. (Eds.). 2002. Human Resource Development and Workplace Governance in the Caribbean, page 387-402, Ian Randle Publishers

70. For this reason, we fully endorse the stance taken by counsel that if *"the employee chose not to participate in the disciplinary hearing for which she had adequate and proper notice... this cannot be considered a breach of the employee's right to a fair hearing."* In our view, the employer was entitled to proceed with the hearing, and the absence of Ms. Myers and her representative has had no bearing whatsoever on the decision of this Tribunal.

71. In considering all the circumstances, we have also taken note of Ms. Myers' own admission regarding her disrespectful behaviour towards her supervisor, Ms. Jarrett, including hissing her teeth and accusing her of being 'vindictive' and calling her a 'liar'. She also acknowledged that Mr. Wiltshire did speak to her about her poor attitude as set out in the second paragraph of his August 10, 2021 email to Ms. Patricia Green, where he said -



"I sat Jheanelle down and gave her a long talk about the incident and her attitude in general. This however seems not to be working as I am still getting reports from her peers about her attitude. I too have been discreetly observing and they are so correct. Warning will not help, Jheanelle's personality is not that of a polite and professional customer service rep."

72. We further note Ms. Myers' testimony under cross-examination that she was upset with Ms. Jarrett and held her responsible for her suspension, and therefore find it hard to accept that in such state of mind her action and utterances on December 8 did not translate into berating Ms. Jarrett. On the facts presented, the Tribunal is of the view that Mr. Stanigar had a reasonable belief that on December 8 Ms. Myers had committed misconduct and that there were reasonable grounds for that belief.

73. These documented incidents of poor behaviour would undoubtedly be cause for concern to any management, as they could negatively affect the image of the company and undermine the social relationship at the workplace.

74. We, however, depart with the company in the manner in which it came to the conclusion that it did to terminate Ms Myers' employment. On the evidence there

were procedural unfairness which, we respectfully submit, rendered the decision unfair.

The role of the Managing Director, Mr. Stanigar in the process leading up to and including the decision to terminate Ms. Myers, and whether such role was prejudicial.

75. The issue before the Tribunal is to determine whether Mr. Stanigar's multiple roles were a fundamental breach of the rules of natural justice. From the evidence Mr. Stanigar played a central role in the whole episode. The warning letter of November 4, 2021 to Ms Myers in relation to the incidents of May/June and October 23, 2021 was signed by Mr. Stanigar. The letter of December 1, 2021 concerning the November 11, 2021 incident in the main sales office, which resulted in the suspension of Ms. Myers, bore the signature of Mr. Stanigar. The letter charging Ms Myers for two infractions, and which resulted in the disciplinary hearing, was signed by Mr. Stanigar. And her letter of dismissal dated December 19, 2021 was also signed by him as Managing Director.
76. There are stark factual differences between the findings, on the one hand, and Mr. Gammon's pleadings before this Tribunal that Mr. Stanigar was present at the disciplinary hearing only as an observer and took no part in the proceedings. We have already alluded to one such instance where it was unlikely that could be the case, but believe it is necessary to reference other examples that goes to the heart of the issue of procedural fairness.
77. We therefore want to first settle these 'factual differences' before proceeding to apply the relevant common law principles to the facts which led to our conclusion.
78. In his closing submission, counsel argued that *"the three members [of the disciplinary committee] without one word from the managing director arrived unanimously at their decision."* He further stated that *"for the Disciplinary Proceedings to have been rendered fair the three members of the Disciplinary Committee would have had to be unduly influenced by another party, such as the managing director in the instant case and he did*

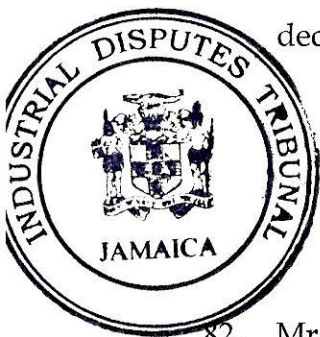


not have any such influence." He informed the Tribunal that the "constitution of the Spectrum Systems Disciplinary Committee is in keeping with the Disciplinary Policy for Public Bodies... that recommends three (3) members for a Disciplinary Committee."

79. With respect, counsel's submission is not borne out by the facts. The findings of the disciplinary hearing [exhibit 11] was forwarded to Ms. Myers by way of a cover letter dated January 6, 2022, from the law firm Kent Gammon & Associates, and signed by Mr. Gammon. In the letter Mr. Gammon's second paragraph states: "enclosed is your copy of the decision unanimously arrived at by the Four (4) Members of the Disciplinary Committee in the disciplinary hearing of Spectrum Systems Limited and Miss Jheanelle Myers which was held on Friday, 17th[sic] December 2021." [Tribunal's emphasis]

80. The report under the heading '**Submission by Employers' Representatives**' disclosed that *"the employer's representative, Ms Devi Brown, agreed that in the final analysis the employee has to go. Mr. Andrew Stanigar, also the Employer's Representative concurred."* Mr. Stanigar signed the findings of the disciplinary committee as one of two 'employers' representatives'.

81. Mr. Stanigar, in terminating the services of Ms. Myers on December 19, 2021 noted that he was a member of the Disciplinary Committee that unanimously made the decision to terminate her services –



"The Disciplinary Committee of the company, comprising Mrs. Joan Lewinson as an independent chairperson, Mr. Lorell Walters, as Employees' Representative, Mr. Andrew Stanigar and Miss Devi Brown as Employers' Representative, held a fairly extensive hearing...concerning the charges laid out in the subject captioned Memorandum."

82. Mr. Stanigar was the main protagonist in the events leading up to Ms Myers' dismissal. Based on his multiple roles, questions of perceived bias are bound to surface, which goes to the heart of procedural fairness in this case.

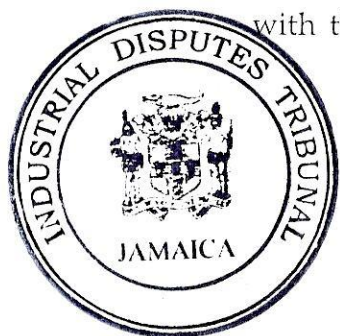
83. As the managing director and principal shareholder at Spectrum Systems Limited, Mr. Stanigar is also one of two employers' representatives. He would obviously

have some influence - even as an observer - on a matter on which he has already signalled a preferred outcome. He was already at his 'wit's end', a feeling we are sure would not have been lost on the other members of the disciplinary committee.

84. In his December 1, 2021 letter of suspension to Ms. Myers, he advised her to -

"immediately submit your resignation from Spectrum Systems, as your stubbornly continuing patterns of totally unacceptable behaviour puts you on a clear path to lawful dismissal in the near future." And then concluded that "I really do think it would be in everyone's best interest for you to not return to work here."

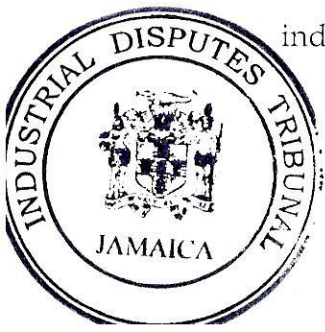
85. In the court's anxiety to 'justifiably shield justice from public opprobrium', Evan Brown, J. in his ruling on the Bank of Jamaica and the Industrial Disputes Tribunal and BITU [2017] JMSC Civ 173] remained resolute to the time-honoured principle that apparent bias must give consideration to 'not what was actually done, but what might appear to be done.'
86. The question we asked ourselves therefore is whether a fair-minded and informed observer, having considered the relevant facts of the case, would conclude that there was a real possibility that the other members of the disciplinary panel would have been influenced by Mr. Stanigar's presence, if not involvement?
87. And so it is, in considering the notion of 'perceived bias', we felt obliged to draw on those principles evident in British common law, and apply the dicta of the supreme court that entitles the Tribunal to determine what is 'fair'. We have concluded from such an examination that Mr. Stanigar's multiple roles led to a real possibility of bias, and an undue influence on the outcome of the disciplinary proceedings.
88. Mr. Stanigar's presence as a member of the disciplinary committee, his perceived influence, and the fact that 'evidence' was heard and considered by the committee about Ms. Myers' alleged disruptive behaviour on December 8, were inconsistent with the principles of natural justice. The indicia of the violation of the Labour



Relations Code were all too evident in the desperate attempt by the management to terminate the services of Ms. Myers.

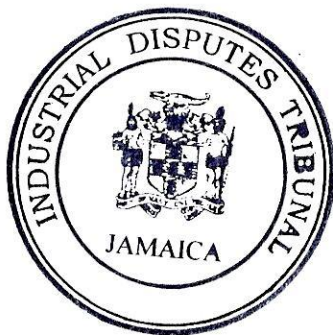
CONCLUSION

89. We are grateful to the parties for their conspicuously clear and cogent arguments provided during the proceedings, and the body of case laws which we felt obligated to examine in details. Our conclusion therefore reflects the insightful knowledge we gained from their submissions.
90. Ms. Myers was suspended on two occasions, on December 1 and December 8, 2021, without any evidence to support the fact that due process was followed. The fundamental precepts governing our jurisprudence is that every person is innocent until the judicial process established in law, prove him/her guilty. The December 8 letter to Ms. Myers, out of an apparent act of frustration, suspended her again for offences for which she was previously suspended.
91. In an ostensible move to give the appearance of due process, Spectrum invited Ms Myers to a hearing to answer, not to allegations regarding her conduct, but to specific charges for which she has been suspended. It would have been a little more comforting if, *ex abundanti cautela*, the word "alleged" found it way in the letter even in a vain attempt to mask the clear intent of Mr. Stanigar to have her separated from the company, as evidenced in his December 1 letter.
92. The 'charges' contained in the December 8 letter to Ms. Myers cannot and should not have resurfaced for a disciplinary hearing, unless, as we stated earlier, new evidence emerged. The fact that the history of her poor behaviour during the period of her employment with Spectrum and the incident occurring on December 8 were considered, is sufficient for us to conclude there were procedural improprieties.
93. On the basis of the evidence, Mr. Stanigar's multiple roles in the instant case, is indistinguishable from the BOJ's case involving Mr. Frank Johnson. This provides a



safe haven to conclude that Mr. Stanigar's role would give rise to accusations of discrimination, bias and unfair treatment.

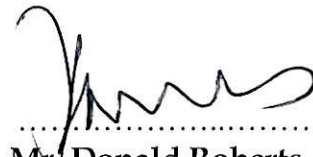
94. The only issue worthy of consideration for disciplinary action was the incident on December 8, and, prior to doing so, the management would first have to conduct further investigation, and provide the necessary supporting evidence, including following the guidelines outlined in the Labour Relations Code.
95. We have said as much that Mr. Stanigar was entitled to act upon any matter in which he formed the view that its occurrence or continuance would be detrimental to the efficiency and effective of his business. That is not an issue upon which any Tribunal can interfere. But management's freedom or right to protect the business and to take the necessary steps to ensure proper compliance with its rules and regulations need, at the very least, to be deferential to the rules of natural justice.
96. We have taken note of Ms. Myers' testimony, aspects of which show inconsistencies, and must determine what weight we give to her evidence, including her failure to fully disclose to the Tribunal her history of employment after leaving Spectrum.
97. Having said that, the Tribunal deliberated on the evidence, gave due consideration to all the circumstances surrounding Ms. Myers' termination, and have taken stock of the Tribunal's jurisdictional remit, duly foreclosed by statute and common law.
98. We have concluded that the dismissal of Ms. Jheanelle Myers by Spectrum Systems Limited was unjustifiable as they failed to observe the rules of natural justice and is therefore guilty of procedural impropriety.



AWARD

99. Accordingly, in exercise of the powers conferred by Section 12(5)(c) of the Act, the Tribunal award that Ms. Jheanelle Myers be paid the sum on Eight Hundred and Seventy-Five Thousand Dollars (\$875,000.00) as relief for her unjustifiable dismissal from Spectrum Systems Limited.

DATED THIS 18th DAY OF SEPTEMBER, 2023



Mr. Donald Roberts, CD, JP
Chairman



Mrs. Jacqueline Irons, JP
Member



Dr. Denese Morrison, JP
Member

Witness:



Mr. Mario Ling
Acting Secretary of the Division