

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: 18/2021

SETTLEMENT OF DISPUTE

BETWEEN

ST. JAMES HIGH SCHOOL

AND

NATIONAL WORKERS' UNION

AND THE

AWARD



I.D.T. DIVISION

MS. SADEERA SHAW	-	CHAIRMAN
MR. RODCLIFFE ROBERTSON	-	MEMBER
MR. KEITH FAGAN	-	MEMBER

MAY 31, 2023

IDT 18/2021

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF AN INDUSTRIAL DISPUTE

BETWEEN

**ST.JAMES HIGH SCHOOL
(THE SCHOOL)**

AND

**NATIONAL WORKERS' UNION
(THE UNION)**



REFERENCE

By letter dated November 2, 2021 the Honourable Minister of Labour and Social Security pursuant to Section 11A (1) (a) (i) of the Labour Relations and Industrial Dispute Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute describe therein:-

The Terms of Reference were as follows:

“To determine and settle the dispute between St. James High School on the one hand, and the National Workers’ Union on the other hand, over the termination of the employment of Mr. Steve Brown”.

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:

Ms. Sadeera Shaw	-	Chairman
Mr. Rodcliffe Robertson	-	Member, Section 8(2)(c)(ii)
Mr. Keith Fagan	-	Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF THE PARTIES

The **School** was represented by:

Ms. Lauri Smikle	-	Legal Officer
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Also in attendance:

Mr. Joseph Williams	-	Principal
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The **The Union** was represented by:

Mr. Alexander Nicholson	-	Negotiating Officer National Workers Union
Mr. Alexi Hull	-	Negotiating Officer National Workers Union

In attendance:

Mr. Steve Brown	-	Dismissed Worker
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SUBMISSIONS AND SITTINGS

Briefs were submitted by both parties who made written and oral submissions during twelve (12) sittings from December 14, 2021, and July 26, 2022.



BACKGROUND TO THE DISPUTE

1. The St. James High School *hereinafter referred to as "the School"*, is a public secondary school located on Princess Street in the parish of St. James. The School falls under the portfolio of the Ministry of Education.
2. The National Workers' Union (NWU), *hereinafter referred to as "the Union"*, is a trade union duly registered under the Trade Union Act having its registered office at 130-132 East Street, Kingston.
3. Mr. Steve Brown, *hereinafter referred to as "the Dismissed Worker"*, was employed to the School in February 2003 as a Cleaner. He was permanently appointed to the post with effect from April 1, 2006. On September 6, 2017, the Dismissed Worker was advised that his duties were reassigned to another area of the school. Shortly after the said reassignment, the Dismissed Worker refused to perform one of the duties. There were several meetings with the Dismissed Worker and the Union concerning same. A disciplinary hearing was held on February 19, 2018. By way of letter dated March 9, 2018, the Dismissed Worker's employment was terminated.
4. The Union then sought the assistance and intervention of the Ministry of Labour and Social Security to contest the Dismissed Worker's termination. No resolution was reached, and consequently the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

THE SCHOOL'S CASE

5. The School presented its case through three (3) witnesses. The first witness was Mrs. Valette Campbell, who testified that she is the Bursar/Secretary to the School Board of Management since January 4, 2016. According to her testimony, as part of her duties, she has full responsibility for all Human Resources matters for the administrative and ancillary staff of the institution. She gave evidence that she knew the Dismissed Worker as he was working at the School when she was hired. She stated that the Dismissed Worker was made permanent as a Cleaner in April 2006. It is her evidence that she was the Dismissed

Worker's direct supervisor and had the responsibility for assigning his duties. She described his (the Dismissed Worker's) duties to include cleaning the classrooms such as the floors, windows, fans and the desks and cobwebbing the grade 7-9 blocks.

6. She testified that the Dismissed Worker did not perform some of his duties such as cleaning the Guidance Counselor's office. She also testified that a meeting was held on March 22, 2016 and letter dated March 30, 2016 was issued to the Dismissed Worker which summarized the said meeting and outlined the decision made. The decision was that the neglected duty of cleaning the Guidance Counselor's office would be reassigned to another person and for the Dismissed Worker to perform his newly assigned duty to empty the rubbish bins on the downstairs of the grade 9 block effective April 4, 2016. Mrs. Campbell gave evidence that a further correspondence dated April 12, 2016 was sent to the Dismissed Worker reminding him of the meeting on March 22, 2016 and letter dated March 30, 2016 where he agreed to empty the rubbish bins on the grade 9 block which he failed to do. The said letter also served to inform him that he had an obligation to perform the duties assigned to him.
7. Mrs. Campbell stated that the Dismissed Worker's duties were later reassigned to another area in September 2017. She, then, explained that the reason for the reassignment was due to the construction of a bathroom on the grade 7-8 block that he was responsible to clean. Due to the fact that it was a female bathroom, the School was of the view that it was not appropriate for a male cleaner to clean the female bathroom so he was reassigned.
8. According to her testimony, the Dismissed Worker was notified of the reassignment in letter dated September 6, 2017 which detailed his new job description. She testified that the Dismissed Worker expressed an issue with the reassignment on the basis that he was a Cleaner and it was the duty of the groundsman to remove garbage from the block. She gave evidence that a meeting was held with the Personnel Committee, the Dismissed Worker and his Union representative on November 29, 2017 to discuss the issue the Dismissed Worker highlighted. The meeting was chaired by Reverend Alton Thelwell, Chairman of the Board, where a decision was made for the Dismissed Worker to continue to remove the



garbage and the matter would be referred to the Board of Management for a final decision to be made. She also gave evidence that it was mentioned in the said meeting that there was no definite time frame as to when the Board would respond. She stated that the Dismissed Worker started removing the garbage then stopped because he didn't receive a response from the Board nor the Personnel Committee. She further stated that the Dismissed Worker stopped taking directives as well. It is her evidence that as a result she wrote to the Dismissed Worker again but he still refused to remove the garbage as he was of the view that it was the groundsman's duty.

9. She testified that due to the non-removal of garbage over a period of time she had to get someone to remove it. She gave evidence that when the issue became overbearing, she escalated the matter to the Principal who then escalated it to the Chairman of the Board. She stated that the Dismissed Worker was charged and invited to a disciplinary hearing by Rev. kThelwell by way of letter dated February 2, 2018. She further stated that the disciplinary hearing was chaired by the Personnel Committee in which Rev. Thelwell is the President.
10. It is Mrs. Campbell's evidence that after the hearing, the findings were taken to the Board where a decision was made to terminate the Dismissed Worker's services. She agreed that Rev. Thelwell chaired the Board meeting held on February 28, 2018 when the decision to terminate was made. It is also her evidence that the members of the Personnel Committee which chaired the disciplinary hearing were allowed to vote as to whether the Dismissed Worker should be terminated. She testified that the Dismissed Worker was terminated by way of a letter dated March 9, 2018 which was handed to him in the presence of a Union delegate. She indicated that the said termination letter was signed by Rev. Thelwell. Mrs. Campbell also testified that the Dismissed Worker was not given an opportunity to appeal the School's decision to terminate and no appeal was held.
11. Mrs. Campbell explained the disciplinary procedure at the School which entailed her calling a meeting to ascertain what was happening and what caused the particular issue. She would then try to solve the issue. If the breach continued, she testified that she would write the employee a letter. If the breach continued, she would write the employee again to



the limit of three (3) letters. If the breach continued, she further testified that a letter is written to inform the employee that the matter would be escalated. She stated that this was what happened with the Dismissed Worker.

12. The School's second witness was Mr. Joseph Williams who testified that he is the Principal and has been in the position since April 1, 2004. He stated that upon taking up the position of Principal at the School, the Dismissed Worker was a member of the ancillary staff. He described his experience with the Dismissed Worker as very bad. He said the Dismissed Worker was rude, indisciplined, insubordinate and disrespectful in his comments which were recorded in his file. He further said he had to report these behaviours to the Board of Management on several occasions such as playing loud music on the School compound, signing in and leaving the School premises during work hours.
13. He gave evidence that the Dismissed Worker's duties consisted of cleaning by sweeping the classrooms on the 7th - 9th grade block and removing the garbage. It is his evidence that there was an adjustment to his duties when the computer room on the 7th-9th block was converted to a bathroom to accommodate the number of students. He testified that the Dismissed Worker was reassigned to another area consisting of classrooms only. He (the Dismissed Worker) was also assigned to continue taking out garbage from the 7th-9th grade block. Mr. Williams later added that there were other Cleaners employed to the School, who removed the garbage along with the groundsmen.
14. Mr. Williams stated that the Dismissed Worker was not adverse to the reassignment of duties as he performed the duties and continued taking out the garbage from the 7th-9th grade block but after a short while he stopped. He further stated in his testimony that meetings were held with the Dismissed Worker to discuss the issue. The persons who attended the said meetings were members of the Board and the Union. It is his evidence that in one such meeting the Dismissed Worker's representative informed the Dismissed Worker that he should not remove the garbage. He gave evidence that the outcome of the meetings was for the Dismissed Worker to continue to remove the garbage from the block. He recalled one instance where the Chairman of the Board informed him to continue to remove the garbage while the Board looked into the matter. He also recalled that the



Dismissed Worker wrote to the Board requesting a 25% increase in salary to remove the garbage which was denied.

15. Mr. Williams testified that the Bursar was the Dismissed Worker's immediate supervisor and he was the ultimate supervisor and/or accountable officer for all the staff. He gave evidence that there were instances where he had direct contact (spoken and written) with the Dismissed Worker when the health and safety of the School was at risk by the flies and rodents due to non-removal of the garbage. It is his evidence that he went under a lot of pressure as the accountable officer because students wrote, teachers complained and the Vice-Principal quarreled about the non-removal of the garbage. It is also his evidence that he had to ask other workers to remove the garbage and he had to help out as well. He stated that he included in one of his written correspondences to the Dismissed Worker that if he failed to carry out his duties, the matter would be reported to the Chairman of the Board. He further stated that after the matter was referred to the Board, there were additional meetings with the Dismissed Worker and the Dismissed Worker still refused to remove the garbage.

16. He testified that he proffered the charges by reporting the matter to the Board as he exhausted all measures available to him. He detailed the measures taken to include speaking to the Dismissed Worker, asking his immediate supervisor to speak to him, the intervention of the Vice-Principal, reporting the incidents to the Board, written communication to him and asking his co-worker, the representative of the janitorial staff, to speak to him. He later agreed that it was the Chairman who signed the charge letter and it was he who made the request to the Board for the Dismissed Worker to be charged. He gave evidence that whenever he spoke to the Dismissed Worker about his refusal to remove the garbage, the Dismissed Worker would hiss his teeth and walk off. It is his evidence that a decision was made by the Board for the Personnel Committee to look into the matter and a disciplinary hearing was held. It is also his evidence that the Board made the decision to terminate the Dismissed Worker. He stated that an appeal was not filed.

Mr. Williams later testified that he did not consider the concerns raised by the Dismissed Worker as a grievance as it was stated in his job description to do any other reasonable



assigned duties. He was of the opinion that it was reasonable for a Cleaner to remove the garbage wherever on the School's compound and it wasn't a new duty as he was removing the garbage when he started working at the School. He gave evidence that he was not aware of any explanation given from the Dismissed Worker for his refusal to remove the garbage.

18. The Company's third and final witness was the former Board Chairman Reverend Alton Thelwell who testified that he held the position for the period 2016 - 2020 or 2021. He gave evidence that he knew of the Dismissed Worker and the case against him. He stated that during his tenure several letters were written by the Bursar to the Dismissed Worker concerning his behavior and failure to perform his duties. He later stated that the Dismissed Worker shared his concern with him after the Bursar wrote to him (the Dismissed Worker) on more than one (1) occasion. It is his evidence that he tried to pacify the situation by meeting with the Dismissed Worker and the Bursar but he (the Dismissed Worker) still refused to carry out his duties. On another occasion, another member of the Board met with him but there was no resolution.

19. He gave evidence that the Principal got involved and brought the matter to the Board's attention. He also gave evidence that the Board met and discussed the matter. The Principal then proffered the charges against the Dismissed Worker with regards to refusing to do his duties, insubordination and not taking garbage down the stairs. He stated that despite numerous meetings with the Dismissed Worker and his Union representative, he (the Dismissed Worker) still refused to carry out his duties on the grounds that it was the female cleaner who should take the garbage down the stairs and that he was doing more work.

20. It is his evidence that the Dismissed Worker requested in writing to the Board a 25% increase in salary to remove the garbage from grade 7-9 block. A meeting was held to discuss the said request and it was decided that the increase would not be granted. This was communicated to him by way of letter dated October 23, 2017. He testified that another letter dated October 25, 2017 was sent to the Dismissed Worker with reference to his request for an increase in salary that an evaluation was conducted where it was discovered that he (the Dismissed Worker) was doing less work with his reassignment of duties than before and as such he should perform his duties. He gave evidence that in one of the several



meetings held, the Dismissed Worker's Union representative suggested that he did not have to do the work and so he didn't.

21. Rev. Thelwell stated that the matter was again referred to the Board which was sent to the Personnel Committee and a hearing was held on February 19, 2018. It is his evidence that the Personnel Committee reported the findings of the hearing to the Board and the Board made the decision to terminate the Dismissed Worker. It is also his evidence that the decision to terminate was made by votes from the voting members of the Board including the members of the Personnel Committee who participated in the disciplinary hearing. Rev. Thelwell agreed with the policy that the person who proffered the charges should not be directly involved in the Board meeting where a decision would be made against the person charged. He explained that the School followed the policy as the Principal was not present for the said Board meeting and there was no need to excuse himself. He testified that he did not vote and would only vote if the votes of the members resulted in a tie.

22. He testified that he was not the Chairman of the Personnel Committee and that his presence at the Personnel Committee meetings held on November 29, 2017, and January 24, 2018 was to observe. He later gave evidence that he was the one who called the Personnel Committee meeting held on January 24, 2018 to order. He stated that his name appeared in the minutes of the said meetings as Chairman of the Board and not Chairman of the Personnel Committee. He further stated that the said meetings were chaired by Judge Henry and Mr. Michael Hemmings. He confirmed that the recommendations from the Personnel Committee held on January 24, 2018 to the Board were to invite the Dismissed Worker to a hearing and to terminate his services.

THE SCHOOL'S CONTENTIONS

The School contends that:

- a) The Dismissed Worker's continued refusal to remove the garbage amounted to insubordination;

The Principal proffered the charges against the Dismissed Worker;



- c) It is the Union's responsibility to guide the Dismissed Worker of his right to appeal;
- d) There was no bias throughout the disciplinary process;
- e) The correct procedure was adopted pursuant to the Disciplinary Procedure outlined in the Terms and Conditions of Employment of the Non-teaching Staff and by extension the Education Regulations, 1980; and
- f) The School asked that the Tribunal finds that the Dismissed Worker was not unjustifiably terminated.

THE UNION'S CASE

23. Mr. Brown testified that he was employed at the School since 2003 as a Cleaner. He described his duties to include cleaning the classrooms, computer labs and offices on the grade 7-9 block. He gave evidence that he was issued a job description when he started working at the School. He stated that he received a letter from the School when he returned from vacation which informed him that his duties were reassigned to another block. He also stated that he didn't have an issue with the reassignment of duties as it was the same work process. It is his evidence that the reason for the reassignment was because one of the computer labs was converted to a male and female bathroom on the grade 7-9 block. It is also his evidence that the School wanted a female cleaner to clean the bathrooms.
24. He later testified that he had an issue when he was asked to carry out duties on the block (grade 7-9 block) that they moved him from in addition to his reassigned duties and that he was doing more work. He disagreed with the assessment that was done by the School which indicated that he was doing less work with the reassignment. He indicated that it was at that point the Union got involved. He was of the view that it was unreasonable as he was moved from the grade 7-9 block to another block and the School still assigned him duties on the previous block. He stated that when he was carrying out his duties on the grade 7-9 block, he had to do everything. As such, the female cleaner who was then assigned to the grade 7-9 block should complete all that was required.



25. He gave evidence that he attended a meeting with his Union representative to discuss the issue he had with the reassignment and was told that the matter would be looked into. He also gave evidence that the School would get back to him but they didn't. He stated that after months had passed he went to the Bursar for an update in which she didn't have one. He also stated that he felt like the School didn't care about his concern. It is his evidence that in an effort to get the School's attention, he wrote a letter requesting a 25% increase. He testified that he was informed that his request for an increase was denied and that he should continue removing the garbage from the grade 7-9 block. He indicated that he had no issue with assisting in another area if the Cleaner assigned was absent. He gave evidence that the next step taken by the School was to issue him a termination letter.

THE UNION'S CONTENTIONS

The Union contends that:

- a) The School did not have sufficient grounds in its decision to terminate the Dismissed Worker;
- b) There were procedural breaches in the disciplinary process;
- c) The principles of natural justice and the strict tenets of procedural fairness were not followed in that the School's Chairman had full knowledge of the matter and participated in every phase of the disciplinary process;
- d) It was asked of the Tribunal to reflect on the leading English case on impartiality *R v Sussex Justices, ex parte McCarthy* which is famous for bringing into common parlance the oft-quoted aphorism "*not only must justice be done; it must also be **seen to be done.***" in considering any remedy; and
- e) The Union asked the Tribunal to find that the Dismissed Worker was unjustifiably terminated and that he should be awarded payment of wages lost for the period between dismissal and any award made and all entitlements he was entitled to at the time of his termination.



THE TRIBUNAL'S RESPONSE AND FINDINGS

26. The Tribunal, after careful consideration of the evidence presented, must determine how the Dismissed Worker's employment with the Company ended.
27. The evidence presented showed that the Dismissed Worker held the position of Cleaner up until his termination. It is accepted that during his (Dismissed Worker) tenure, he was issued a job description setting out his duties and responsibilities. The Tribunal also accepts that the Bursar, the Dismissed Worker's immediate Supervisor, reassigned his duties in letter dated September 6, 2017 (exhibit # 2). This reassignment was not opposed at the outset but the Dismissed Worker later indicated an issue with the removal of garbage from the block he was initially assigned to. Both witnesses from the School and the Dismissed Worker gave evidence, which was accepted by the Tribunal, that as a result of his issue of performing the task, the Dismissed Worker stopped removing the garbage.
28. The evidence revealed that the Dismissed Worker's refusal to remove the garbage was addressed in a number of meetings in which he (the Dismissed Worker) was informed that the matter would be referred to the School's Board for review and that he should continue removing the garbage until he received a response. The persons present at the meetings were the Bursar, the Principal, members of the School Board including the Chairman, the Dismissed Worker and his representative. It is accepted that after the meeting the Dismissed Worker removed the garbage for a period and then stopped again. It is also accepted that the Dismissed Worker's continuous refusal to remove the garbage resulted in a health hazard at the School.
29. The Tribunal finds that the Dismissed Worker was charged with insubordination for his continued refusal to remove the garbage from the grade 7-8 block and a charge letter was issued to him on February 2, 2018 (exhibit # 7). This raises the question of who proffered the said charges. The Tribunal does not accept the Company's evidence that the Principal,



Mr. Williams, by informing the School Board about the Dismissed Worker's continued refusal to remove the garbage and requesting for the Board to deal with the matter urgently amounted to the proffering of the charge against the Dismissed Worker. The Tribunal is of the view that in proffering a charge is to formally inform the accused (in this case, the Dismissed Worker) of the offence laid against them and the Dismissed Worker was not privy to the Principal's referral to the Board and as such the charge was not proffered at that time. The Tribunal finds that it was Rev. Thelwell, Chairman of the Board, who proffered the charges when he signed the charge letter addressed to the Dismissed Worker. This letter also invited the Dismissed Worker to a disciplinary hearing.

30. The Tribunal accepts the evidence that a disciplinary hearing was held by the Personnel Committee and a report was sent to the School's Board for action. The Tribunal noted that a number of Personnel Committee meetings inclusive of the disciplinary hearing were held in which Rev. Thelwell was present. The School argued that it was a requirement that the Chairman of the Board was a member of the Personnel Committee and that it was guided by the Education Regulations (1980) specifically s. 85(1)(a), (2) and (3) where it states:

(1) "The Board of Management of every public educational institution shall, for the purpose of facilitating inquiries into allegation of breaches of discipline by or against members of staff or students appoint a personnel committee to which the Board shall refer any such allegations, and such personnel committee shall consist of-

(a) in the case of a government owned institution-

(i) the chairman of the Board;

(ii) one nominee of the Council;

(iii) subject to sub-paragraph (c), the representative on the Board of the category of accused personnel;...

(2) The quorum of the personnel committee shall be two, one of whom shall be the chairman or the vice-chairman of the Board.



(3) Upon completion of its hearing into the alleged breach of discipline the committee shall submit a report to the Board for action."

31. In giving evidence, Rev. Thelwell stated that his name appeared as Chairman in the minutes of the Personnel Committee meetings as Chairman of the Board and not Chairman of the Committee. The School further argued that although it was a requirement for the Chairman to be a member of the Personnel Committee, Rev. Thelwell's role in the said meetings was as an observer and that he didn't play an active role. The Tribunal does not accept Rev. Thelwell's evidence nor the School's submission as the evidence presented proved otherwise. Firstly, while it is a requirement for the Chairman of the Board to be a member of the Personnel Committee, that role could have been performed by the Vice-Chairman as stated in s. 82 and 85(2) of the Education Regulations (1980). Secondly, the Tribunal finds it quite unusual for an observer to call a meeting to order and to sign the minutes of the said meetings he professed to have observed. Thirdly, the Tribunal accepts Mrs. Campbell as a credible witness and accepts her evidence that it was the Chairman who chaired the disciplinary hearing as the Chairman of the Personnel Committee. The Tribunal finds that Rev. Thelwell chaired all of the Personnel Committee meetings concerning the Dismissed Worker as well as the disciplinary hearing.

32. In considering the matter of procedural fairness during the disciplinary process, the Tribunal is tasked to look into the School's dealings with the Dismissed Worker. The Dismissed Worker's employment was terminated for disciplinary reasons and therefore section 22 of the Labour Relations Code is applicable. Section 22 of the Labour Relations Code states that:

Disciplinary Procedure

1) Disciplinary Procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:

- a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;*



- b) *Indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*
- c) *give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
- d) *provide for a right of appeal, wherever practicable, to a level of management not previously involved;*
- e) *be simple and rapid in operation.*

33. The Tribunal finds that the Dismissed Worker was not given the opportunity to appeal. The Tribunal does not accept the School's submission that it was the Dismissed Worker representative's responsibility to guide the Dismissed Worker on his right to appeal. The Tribunal finds it noteworthy to state that an employer, regardless of any advice given to the Dismissed Worker, has an obligation to give a Dismissed Worker an opportunity to appeal its decision. This appeal should be heard by a person at a level of management not previously involved in the matter.

34. The Tribunal is also of the view that the School failed to observe the strict principles of natural justice in terminating Mr. Brown. The often quoted rules of natural justice recognized by the Court are set out below:

- (a) Audi Alteram Partem- the Accused has a right to be heard.

This requires that the accused should be allowed a disciplinary hearing for him to put forward a defence against the charges laid against him. In doing so, the Dismissed Worker should be allowed the right to representation of his choice to assist him in his defence.

- (b) A man should not be a judge in his own cause



This requires that the procedure should show impartiality and be presided over and/or managed by persons who will be fair and objective, and certainly not a part of the institution which is making the accusation or bringing the charges against the accused.

(c) A person accused or charged should know what case he has to meet

This requires that the person called upon to answer charges should be informed of such charges well in advance to allow the person time to understand the charges and to seek legal representation or assistance where he feels this is necessary or helpful in determining the charges brought against him/her.

35. While the Tribunal notes that the School fulfilled (a) and (c) above, the Tribunal finds that the School failed to fulfill the provisions set out in (b) above. In the instant case, the Chairman, Rev. Thelwell played a number of roles throughout the disciplinary process. He was involved in the meetings held with the Dismissed Worker prior to being charged. Rev. Thelwell then charged the Dismissed Worker and invited him to a disciplinary hearing. Rev. Thelwell was also the Chairman of the Personnel Committee which presided over the disciplinary hearing. Finally, it was Rev. Thelwell who terminated the Dismissed Worker by signing the termination letter dated March 9, 2018 (exhibit # 9).

36. The Tribunal accepts that the Personnel Committee submitted a report to the Board where the Board members made the decision to terminate. The Tribunal finds that the School failed to observe its own policy as specified in clause 25 of Ministry of Education and Culture Terms and Conditions of Employment of the Non-Teaching Staff (exhibit # 9). Clause 25 states:

"...If the offence is of such that a hearing is required, the matter should be referred to the Board of Management. The time and place of the hearing should then be communicated to the employee who has the opportunity to be represented. The person preferring charges should not be directly involved in the Board meeting..."



The Tribunal notes the School's attempt to observe the above policy by not allowing the Principal to attend the Board meeting when the decision was made to terminate the Dismissed Worker. The Tribunal reiterates its earlier finding that it was the Chairman who proffered the charges and as such Rev. Thelwell should not have attended that Board meeting. Further, as stated in s. 82 of the Education Regulations (1980), the Vice-Chairman can assume the duties of the Chairman in his absence.

37. The Tribunal must also consider Section 3(4) of the Labour Relations and Industrial Disputes Act, which states:

"A failure on the part of any person to observe any provision of a Labour Relations Code which is for the time being in operation shall not of itself render him liable to any proceedings; but in any proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or a Board to be relevant to any question arising in the proceedings shall be taken into account by the Tribunal or Board in determining that question."

38. Upon examination of all of the evidence presented, the Tribunal finds that the School had cogent reasons to terminate the Dismissed Worker for insubordination. Notwithstanding that the Dismissed Worker's breached the School's policy, the School failed to observe the provisions as set out in the Labour Relations Code and the strict tenets of natural justice in terminating Mr. Brown. The Tribunal also finds that the Dismissed Worker contributed to his termination and no evidence was provided to prove that the Dismissed Worker made any effort to mitigate his loss.

39. Therefore, the Tribunal concludes that the termination of the Dismissed Worker was unjustifiable.



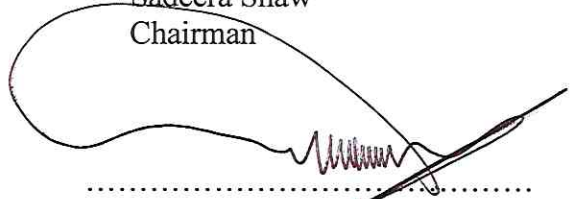
AWARD

In accordance with Section 12(5)(c)(ii) of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Mr. Steve Brown be compensated in the amount of One Million Seven Hundred and Thirty Thousand Dollars (\$1,730,000.00) for his unjustifiable dismissal.


DATED THIS **31st** DAY OF MAY 2023


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Sadeera Shaw
Chairman


.....

Rodcliffe Robertson
Member


.....

Keith Fagan
Member

Witness


.....

Jody-Ann Lindo (Ms.)
Secretary to the Division

