

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 20/2019

SETTLEMENT OF DISPUTE

BETWEEN

T. GEDDES GRANT (DISTRIBUTORS) LIMITED

AND

MR. RALSTON SMALL

AND THE

AWARD

I.D.T. DIVISION



HON. MRS. JUSTICE MARJORIE COLE-SMITH (Retd.)	-	CHAIRMAN
MRS. JACQUELINE IRONS J.P.	-	MEMBER
MRS. CHELSIE SHELLIE-VERNON	-	MEMBER

JUNE 30, 2020

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**T.GEDDES GRANT (DISTRIBUTORS) LIMITED
(THE COMPANY)**

AND

**MR. RALSTON SMALL
(THE DISMISSED WORKER)**

REFERENCE:

By letter dated June 11, 2019 the Honourable Minister of Labour and Social Security in accordance with Section 11A 1(a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

“To determine and settle the dispute between T. Geddes Grant (Distributors) Limited on the one hand and Mr. Ralston Small on the other hand over the termination of his employment by reason of redundancy.”



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 (Retd.) - Chairman
- Mrs. Jacqueline Irons, J.P. - 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. Rowan O. Mullings - Attorney-at-Law
- Mr. Karl Wynter - Chief Operating Officer

The **Dismissed Worker** was represented by:

- Mr. Howard Duncan - Industrial Relations Consultant

In attendance:

- Mr. Ralston Small - Dismissed worker



SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during ten (10) sittings held between October 11, 2019 and February 14, 2020.

BACKGROUND TO THE DISPUTE:

1. T. Geddes Grant (Distributors) Limited (hereinafter referred to as the Company) is a company whose business is distribution which it carries out under various agency/distributorship arrangements with various principals and for various brands. The Company is organized into different business units namely merchandise, consumer pharmaceutical, agriculture and office equipment.
2. In each business unit the sales activity is typically carried out by Sales Reps who report to a Sales Manager, Regional Manager or a General Manager. It is a registered company with its Head Office located at 109 Marcus Garvey Drive, Kingston 11.

3. Mr. Ralston Small was employed as National Sales Manager in the Merchandise Division and had been employed to the Company since June 18, 2014. Mr. Small was summoned to a meeting by Mr. Hudson, the General Manager on July 13, 2018 and was informed that his position was terminated on the grounds of redundancy. The letter states as follows:

"July 12, 2018

*Mr. Ralston Small
c/o T. Geddes Grant (Dist.) Limited
Angels Warehouse
Angels
St. Catherine*

Dear Mr. Small,

In keeping with our mandate to operate an effective and efficient business model, aspects of the business will be restructured and several positions will be made redundant. Regrettably, your position will be among those that will be made redundant on July 12, 2018.

In accordance with the Employment Termination & Redundancy Payments Act, your notice period is one (1) month. However, in lieu of receiving that notice you will be paid. You will also be paid your entitlements and any outstanding pay up to and including your last day of employment. A statement of the calculation is attached to this letter.

On behalf of the Management of this Company, we extend appreciation for the service you have given to the organization and wish you success in your future endeavours.

Yours truly

T. Geddes Grant (Dist.) Limited

Karl Wynter

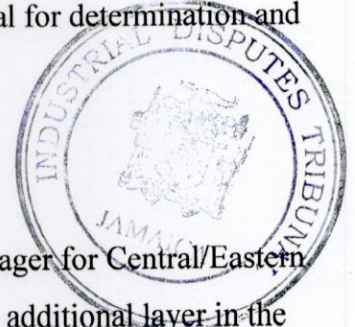
Chief Operating Officer."



4. Mr. Small engaged the services of Mr. Howard Duncan, Industrial Relations Consultant who protested his termination. The matter was reported to the Ministry of Labour and Social Security. No resolution was reached and hence the matter was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE:

5. Mr. Small was employed to T. Geddes Grant on June 18, 2014 as Regional Manager for Central/Eastern Jamaica at the time. The Merchandise Division had evolved uniquely to have an additional layer in the form of a National Sales Manager to whom Regional Managers reported. Consequently, Mr. Small's functions evolved overtime in response to the demands of the business as prompted by commercial conditions and his performance. Mr. Small eventually became National Sales Manager in the Merchandise Division, a position he held until the time of his termination by way of redundancy on July 13, 2018.
6. In November 2016 the Company entered into a distribution arrangement with SM Jahleel Company for the distribution of beverages. The arrangement was for non-carbonated beverages in the first phase which was expanded to include carbonated beverages in the second and final phase. With the acquisition of this distributorship the Company separated or adopted a specialized sales force to deal with beverages and separate accounts were created to deal exclusively with the sale of beverages. Mr. Small remained with the responsibility for old, general merchandise accounts. The management of the beverage sales force was vested primarily in the General Manager for the Merchandise Division, Mr. Rudyard Hudson, and though Mr. Small still exercised some control of the beverage reps, more and more of the general supervisory functions of Mr. Small as it relates to SM Jahleel were being divested to the General Manager of the Merchandise Division.
7. The Company conducted regular business review meetings in which the respective managers participated to look at business trends, sales against budget and profit. These meetings provided the opportunity for discussion of problems and matters affecting the business, the accomplishment of targets, the sales force motivation/morale etc. Mr. Small was a key participant in these meetings for his Division.
8. The Company called four (4) witnesses in support of its case. The first was Mr. Michael Subratie, Managing Director who testified that Mr. Small was a good Sales Manager who did his job effectively.



His evidence was that Mr. Small was positive and respectful and that he and Mr. Small had a very good relationship. Mr. Small he said was a gentleman who would voice his concerns, he was well respected and would give his opinions in meetings which he Mr. Subratie found to be constructive. He had business review meetings with his team to look at the Company's performance and Mr. Small participated actively in these meetings.

9. Mr. Subratie's evidence is that the structure at the Company is that of himself as Managing Director and then a Chief Operating Officer, Mr. Karl Wynter and each of the divisions of the Company has a General Manager and in particular to Mr. Small's case the General Manager was Mr. Rudyard Hudson. Eventhough, Mr. Small reported directly to Mr. Hudson, he, Mr. Subratie had an open door policy where Mr. Small would come to him with suggestions. He said he had a flexible relationship with all of his key members. He stated that he met with Mr. Small on two (2) occasions and discussed the issue of redundancy.
10. The first occasion was on April 17, 2018 the same day as the Business Review Meeting. He met with Mr. Small and told him that his position would be made redundant effective July 2018. Present at that meeting was his Executive and Administrative Assistant, Sharon Drummond. He said at the meeting Mr. Small's view was that he would do everything he could to try and improve the business because he was very much privy to the challenges and struggles that the Company was having at the time. Mr. Subratie said that the Company was losing a lot of money, costs were exceeding sales and it was unsustainable and so they had to adjust. In that meeting, he explained that the existing structure would be changed and that Mr. Small's job would be incorporated in the General Manager's job. He said that the main reason that caused the restructuring was the fact that there was a beverage company from Trinidad called SM Jahleel which was distributing beverages on their behalf but because of the type of business it involved a lot of expenses in terms of deliveries. It was such a high volume business with a very low margin and when they looked at the business they realized that it was very difficult to keep the structure and so they were forced to restructure.

They had a high deficit at the bank, very high overdraft and they had to make sure that they could afford to pay all their expenses for all their team members and if they were to continue along that line they could go bankrupt.



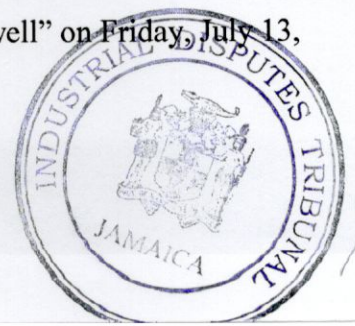
11. Mr. Subratie in examination-in-chief testified that when they lost SM Jahleel Agency in July they realized that they couldn't continue on the existing cost structures and so they had to restructure which involved making positions redundant. They had to reduce costs from the warehouses that they had rented by closing the warehouses. The persons working at the warehouses were made redundant because their positions were no longer needed. Mr. Subratie said that prior to having that meeting they would talk in the Business Review Meetings.

The second meeting with Mr. Small was on July 6, 2018. He said Mr. Small was always understanding of the circumstances. At that meeting it was basically confirming everything that he had already discussed. They spoke informally about the changes to come. He did not recall what method was used to call Mr. Small on July 6, 2018. Mr. Subratie in evidence said that Mr. Wynter was aware of the meeting he had with Mr. Small on July 6, 2018. However, further in his evidence he said that neither Mr. Wynter or Mr. Hudson were aware of him having discussions with Mr. Small re making his (Mr. Small) position redundant. He insisted that he met with Mr. Small on April 17, 2018 and July 6, 2018. He stated that all the managers at Mr. Small's level knew that the Company was having challenges. He stated that he told Mr. Small that his duties would be rolled into the duties of the General Manager, Mr. Hudson and to date this still remains.

12. The next witness was Mr. Karl Wynter, Chief Operating Officer at the Company. He is involved in the day to day running of the Company. He manages four divisions along with the support functions of the Company which included warehousing, purchasing, overseeing the Company's profit and loss statements and basically dealing with all aspects of the business as mandated by the Chairman and/or the Managing Director. Mr. Wynter testified that Mr. Small was an affable person, very forthright, professional, who if he feels that injustice exists anywhere, especially in relation to him or any of his personnel, he would not think a second about bringing it to his (Mr. Wynter's) attention. They shared a professional relationship as good as it could get on the job. His evidence was that the Merchandise Division was very important to the Company and that some of the positions overlapped, therefore, what the Company would do when persons resign was to fill from within. Mr. Wynter stated that he participated in business review meetings where they would look at the different portfolio and by extension the overall performance of the divisions. The Merchandise Division was always a challenging one, one that could make or break the entire business. Mr. Small always made his contributions at the Divisional meetings. It is Mr. Wynter's evidence that Mr. Small was very sound commercially, he was able to share his knowledge of what was happening in the market place, what were some of the things he saw that the Company needed to have done differently.

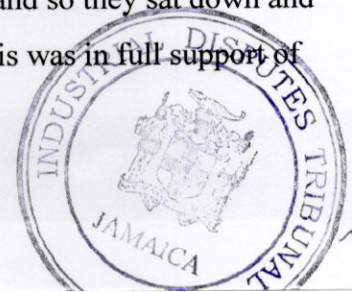


13. Mr. Wynter during examination-in-chief testified that he could not give an exact time line as to when he became aware of the redundancy but said that it was near July 12 or 13, 2018. He said that he did not have any meeting with Mr. Small prior to signing the letter of July 12, 2018. Mr. Wynter in his letter dated September 6, 2018 (Exhibit IV) did in fact confirm that separate and apart from the meeting with Mr. Hudson, the day Mr. Small received the letter terminating his employment by reasons of redundancy, there was no other discussion with Mr. Small about the restructuring exercise. He said that he became aware of the redundancy exercise because of his position in the Company. The matter concerning Mr. Small and redundancy was discussed with Mr. Hudson. Mr. Wynter when asked if he had heard Mr. Small mention "*reckless decisions by the GM & COO*" in the Credit Meeting of July 12, 2018, his response was that if he had heard he would have discussed the matter with him. He stated that both he and Mr. Hudson left the credit meeting because they had to meet with the Chairman, Mr. P. O. Scott.
14. Mr. Wynter stated that no disciplinary meeting or appeal was necessary as Mr. Small's position was made redundant. He admitted that he did not have any conversation with Mr. Small on the matter of redundancy, and he recalled that no alternative position was offered to Mr. Small. On August 28, 2018 when he received the letter from Mr. Duncan he was shocked as Mr. Small had accepted the letter, so he was kind of in a tailspin when he saw the letter.
15. The third witness called was Ms. Nola Vincent, the Human Resource Officer. She testified that during Mr. Small's tenure no disciplinary action was ever taken against him. She stated that Mr. Small was '*quick wit and very positive who got along with everyone.*' He had a good rapport with the team and was concerned about the Sales Representatives who reported to him. He was very sociable even though he would speak his mind. Her evidence was that she became aware of Mr. Small's termination by reasons of redundancy on July 11, 2018.
16. Ms. Vincent said that Mr. Small after receiving the letter of termination from Mr. Hudson came to her office to report that the address in the letter needed to be corrected as the address was c/o T. Geddes Grant. He told her that he was "*not surprised at the contents and that he would be ok.*"
17. She expressed the view that there was no expression of 'shock' from Mr. Small at the time. She referred to a series of emails between herself and Mr. Small beginning with a "Farewell" on Friday, July 13, 2018 to the Merchandise Commercial Team.



She said there were other emails discussing, the details of calculation and redundancy payments which ended with Mr. Small receiving his cheques on July 19, 2018 which she handed over to him along with a detailed statement of the calculation and he signed for them.

18. She said that she was aware of a redundancy exercise in the Company subsequent to Mr. Small being terminated. The Ministry of Labour was informed about the redundancy exercise in October 2018 when lists of one hundred (100) names were submitted including Mr. Ralston Small. She further stated that the list for the redundancy exercise came from Mr. Karl Wynter's Office. Ms. Vincent in cross examination testified that she did not meet with Mr. Small prior to him receiving the letter of termination by way of redundancy. She was not aware if any alternate employment was offered to Mr. Small. She did not recall any redundancies prior to 2018. Ms. Vincent in her evidence said that the Logistic Manager's position and Merchandise Manager's position may have been made redundant at the time when Mr. Small's position was made redundant.
 19. Redundancies were done on a phased basis from July 2018 to April 2019. Ms. Vincent further stated that meetings with regards to redundancies were held with staff in September, October and November, 2018. It is her evidence that no meetings were held prior to Mr. Small's position being made redundant.
 20. The Company's final witness was Mr. Rudyard Hudson, General Manager and Mr. Small's direct supervisor. He testified that he was General Manager for the Merchandise Division and was in charge of Sales, Marketing and Administration. He was fully responsible for the performance of the Division. He was required to ensure that the Company meets its profit obligation and as such his responsibility as General Manager was to bring the team together to achieve same. Mr. Small reported to him and he described his relation with Mr. Small as "very good." Having taken on the position of General Manager he had to get a new team together which consisted of Ralston Small being the National Sales Manager. Mr. Hudson in evidence stated that he and Ralston worked together because he (Mr. Hudson) had to understand from Mr. Small what were the issues and how they could work together to improve the performance of the Division.
- sBoth he and Ralston worked on issues together and one of the main things was that Ralston was stretched
21. Both he and Ralston worked on issues together and one of the main things was that Ralston was stretched in his role trying to cover a number of parishes as Sales Manager and so they sat down and strategized. The Company agreed to employ two Regional Managers and this was in full support of Ralston carrying out his functions as National Sales Manager.



22. Mr. Hudson in examination-in-chief said that he knew that Mr. Small's position would be made redundant a week or week and half before he sat with him on July 13, 2018 as he was called to a meeting by his superiors and told that because of the performance of the Division in terms of meeting its profitability the position of National Sales Manager would be made redundant and that, he would have to take on the responsibilities of same.
23. Mr. Hudson said he was the one who had to execute, meaning handed Mr. Small the letter of redundancy as he (Mr. Small) reported directly to him as General Manager. He recalled the date of July 13, 2018 when he invited Ralston to his office, he said they had discussions that surrounded the Company's operation and targets for the Sales Reps seeing that he may be taking over as Sales Manager and that part of his job function was that he was the one who would set the targets for the Reps so he was following up as to where Mr. Small was with those targets. He said at that point he told Mr. Small that his position was made redundant and handed him a sealed letter, which he opened and read the contents. I asked him what was it that he was going to do now and his response was:
- "Ruddy, don't worry about me, it is a load that you have taken off my shoulders... I have a business where I rent cars and I will be okay, don't worry about me."*
24. Mr. Small spoke about the incorrect address on the letter and he left his office and proceeded to the HR Department. Mr. Hudson stated that he was copied on the email communications alongwith Ms. Nola Vincent and Mr. Small. He also knew about the letter sent to Mr. Karl Wynter by Mr. Duncan. He stated that he had no discussion with Mr. Small about resigning. He stated that the profit and loss accounts of the Merchandising Division were shared with Mr. Small as a member of the management team on a monthly basis. He also referred to the Credit Meeting that Mr. Wynter and himself left early as they had another meeting to attend at 11:00a.m. He further stated that because of health matters he agreed that Mr. Small could work from home from time to time. Mr. Small was not a man of short words, he always speaks his mind.
25. Mr. Small was not offered an alternative position. He stated that the position of National Sales Manager does not exist even at this time as he was still operating as the Sales Manager. He could not state whether Mr. Small was surprised at the news of his redundancy. The Company and Musson merged in October 2018 which caused further redundancies.



26. Mr. Hudson in examination-in-chief said that he did not remember in the meeting of July 12, 2018 Mr. Small commenting on balances brought on by reckless decisions taken by the GM and COO and even if Ralston felt that way he would have to keep it to himself. He said that the meeting was a normal credit meeting and there was no agenda that would be used because it followed the same pattern. He said these credit meetings were never short, so to say that they left within fifteen minutes into the meeting, that is not so. Mr. Hudson, when asked if he had discussions with Mr. Small on the matter of reimbursement for meals, his response was yes, they had discussions after being told by the COO, Mr. Wynter that meals around town would not be reimbursed. Hence, they had a conversation in his office about such. It was not just in relation to Mr. Small but all travelling officers who worked close to their home base.
27. It is the Company's submission that in or around August 2018 they lost SM Jahleel Agency/distributorship which precipitated a sudden sharp downturn in the Company's business and its need for sales staff and other personnel. Further discussions were had with Mr. Small by the Managing Director and later again with the General Manager of Merchandise at the time of Mr. Small's regrettable termination on July 13, 2018. Mr. Small expressed relief and moved on to rectify his address with Ms. Vincent, the Human Resource Officer.
28. On July 16, 2018 Mr. Small sent two emails to the Human Resource Officer indicating that the effective date of his redundancy was to be one day later than specified as he reported for work up until July 13, 2018 and so he was of the opinion that all payment calculations should bear that in mind. He enquired about certain benefits and the specific time when the payment would be made. He also enquired about sales incentive payment due to him which would have been paid in July 2018 salary. Mr. Small sent another email indicating that the calculations for all of his benefits should be until the end of the notice period. The Company acceded, made the necessary amendments and reissued the particulars of the redundancy and other payments due to Mr. Small. On July 19, 2018 the payment was prepared by way of cheque which Mr. Small collected, as it relates to sales incentive that was outstanding and the payment for same was prepared on February 18, 2019.
29. Six (6) weeks after Mr. Small was terminated, the Company received a letter dated August 28, 2018 from Mr. Small's Representative, Mr. Howard Duncan alleging unfair termination. By this time the Company contends that it was further involved in the winding up of SM Jahleel Distributorship, consequent to the termination of the arrangements August 31, 2018.

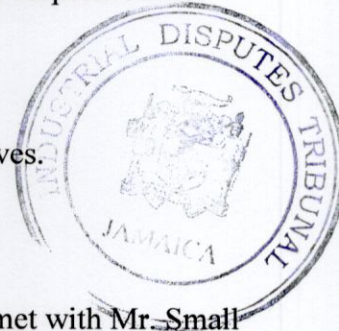


30. The Company contends that it acted reasonably and rationally in a purely business decision void of any malice whatsoever towards Mr. Small who apart from his intimate knowledge of the business' performance and outlook by virtue of his position was also engaged directly in discussions about his pending redundancy.

THE DISMISSED WORKER'S CASE:

31. Ralston Small was employed to T Geddes Grant (Distributors) Limited as Regional Manager in June 2014 and then promoted to National Sales Manager of the Merchandise Division. His responsibilities included:

- (i) Actively involved in recruitment and training of all sales personnel
- (ii) Breakout of sales targets in keeping with the Company's overall objectives.
- (iii) Overall management of the Division's Sales Department.



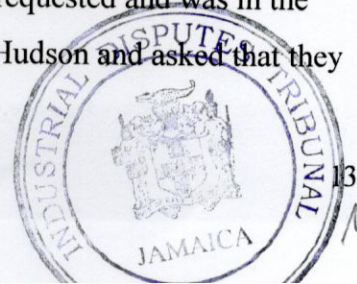
32. During the months of May and June 2018, Mr. Rudyard Hudson, General Manager, met with Mr. Small on several occasions and instructed him to raise the sales targets of the Sales Reps by 30% and 20% respectively in mid- months. Mr. Small said that he was opposed to doing this, and expressed the view that it was unfair to make such adjustment in mid months as their targets had already been communicated to the Sales Team and also given the fact that there wasn't the inventory on hand to even achieve those sales volumes if it were possible. Mr. Hudson repeatedly insisted that this directive was coming from the Chairman and that this was an effort to lower the commissions paid to the Sales Reps in order to achieve making total payout a lower percentage of gross margins. Mr. Small complied with the request.

33. Mr. Small had very frequent differences with the General Manager, Mr. Rudyard Hudson over constant changes made to the compensation structure of the Sales Reps, which resulted in lower earnings. These changes were being implemented frequently without consultation, proper communication or the agreement of members of the Sales Team.

34. Mr. Small was advised sometime during the month of May 2018 that he would no longer be reimbursed for meals purchased around town as well as toll charges incurred whilst travelling on the job after he submitted one such claim. In an email dated June 6, 2018 from Mr. Small to Mr. Hudson and copied to Messers. Wynter and Subratie (Exhibit 24) he enquired about an expense refund claim totalling fifteen thousand seven hundred and seventy dollars (\$15, 770.00). Included in that claim were bills for lunch purchased in trade in Kingston and Portmore amounting to four thousand five hundred and eighty seven

dollars (\$4, 587.00). He said that he was informed by Mrs. Latasha Lynch on Tuesday June 5, 2018 that the claim was not approved on the basis that claims for lunch will only be accepted when working out of town. She further mentioned something to the effect, that lunch should be had at the office if work is being done in Kingston, a suggestion he, Mr. Small in the said email stated that he found not only absurd but grossly impractical given the nuances of travel plans in relation to the office.

35. He further went on to state in the email that in the four years since he had been employed to the Company, this never the case, neither was there any form of communication notifying of any changes in practice. *'While I subscribe to the notion that policies (if they clearly exist) are subject to change at any time, to do so in the manner that obtained in this instance, in my opinion, borders on disrespect and lacks regard for those affected - in this case me. This benefit he said had been available to him since, he joined the company in June 2014.'*
36. On the morning of Thursday, July 12, 2018 Mr. Small said that he was summoned by the General Manager, Mr. Hudson to attend a credit meeting at the office. No agenda was supplied for the meeting, however, as the meeting progressed, he realized that the meeting was to discuss overdue balance from customers. Present at the meeting were myself, Mr. Karl Wynter, Mr. Hudson, Mr. Ransford Evans and Mr. Rowan O. Mullings. At the commencement of the meeting he (Mr. Small) stated that the reason why the meeting was being held was due to two large overdue amounts from Frankfield Variety Store and Rave Wholesale which were balances brought by reckless decisions taken by the General Manager and the Chief Operating Officer to approve increased credit limits without prior consultation with any of the sales team members. Mr. Small further stated that he didn't need to be in the meeting as the situation could have been averted had they acted with better judgement.
37. It is Mr. Small evidence that within fifteen (15) minutes into the meeting, both Messrs. Karl Wynter and Rudyard Hudson left simultaneously without providing any reasons, and neither of them returned to the meeting. Mr. Small said he eventually left and went about other company's business as it was evident that they were not returning to the meeting.
38. On Friday, July 13, 2018 while working from home, he was called by Mr. Hudson at about 9:30 a.m. and advised to report to the office as he needed to discuss some matters with him. He reported as requested and completed a revision of the sales targets that Mr. Hudson had requested and was in the process of departing at approximately 1:00 p.m. when he was called by Mr. Hudson and asked that they



meet before he, Mr. Small left. During the brief meeting Mr. Hudson addressed the sales performance to date and initiatives to improve same. He then proceeded to comment on his (Mr. Small's) strident demeanour and "certain utterances" he, Mr. Small had made since his return to work from vacation leave and further suggested that if he was dissatisfied with the company he should consider resigning or request that his position be made redundant. He pointed out to Mr. Hudson that, that approach was not an option, as he had a need for employment. To his surprise, Mr. Hudson then handed him an envelope containing a letter of redundancy dated July 12, 2018 informing him that his position as National Sales Manager was being made redundant with immediate effect. During Mr. Small's entire tenure at the Company he has never received any form of reprimand neither written nor oral, neither was he informed or made aware of any redundancy exercise being carried out by the Company at anytime whatsoever. It was with absolute shock that he received the letter of redundancy and requested to hand over his assigned motor vehicle and all other company property.

39. By letter dated August 28, 2018 Mr. Karl Wynter was written to requesting an appeal hearing with the view to have him (Mr. Small) reinstated in his job without any loss of pay. The request for the appeal was not addressed and the matter was subsequently referred to the Ministry of Labour.

DISMISSED WORKER'S CONTENTION:

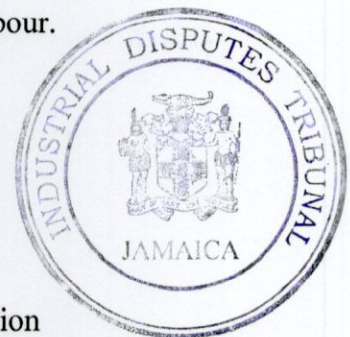
40. It is the dismissed worker's contention that:

- a) his termination was unjustifiable and unfair
- b) there was no communication or consultation with him prior to his termination
- c) his services were terminated due to his frank views and not as mentioned in the letter of termination dated of July 12, 2018
- d) he was terminated before he met with Mr. Hudson
- e) he was not provided with the right of appeal.

41. Reference was made to Section 2 (1) of the Labour Relations Code which sets out the following guidelines:

"Purpose

The code recognizes the dynamic nature of industrial relations and interprets it in its widest sense. It is not confined to procedural matters but includes in its scope human relations and the greater responsibilities of all the parties to the society in general.



Recognition is given to the fact that management in the exercise of its function needs to use its resources (material and human) efficiently. Recognition is also given to the fact that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it, ensuring continuity of employment, security of earnings and job satisfaction."

42. Reference was also made to Sections 11 and 19 of the Labour Relations Code which speaks to Security of Workers, Communication and Consultation.

43. Mr. Small contends that the Labour Relations Code and the Principles of Natural Justice were not adhered to. Mr. Duncan asked that the Tribunal finds that Mr. Small was unjustifiably terminated and as such asked that he be re-instated and compensated from the date of his termination.

THE TRIBUNAL RESPONSE AND FINDINGS:

44. The relevant issues for the Tribunal to determine in the settling of this dispute are:

- 1) Whether there was a genuine case of redundancy,
- 2) Whether the Company observed the proper procedures in terminating the employment of Mr. Ralston Small by reasons of redundancy.

45. The first issue to be resolved is whether or not there was a genuine redundancy situation under Section 5(2)(b) of the Employment Termination and Redundancy Payment Act, 1974. A redundancy situation occurs where the dismissal is attributable wholly or partly to:-

5(2)(a) ...

(b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish, or

(c)...

46. The evidence submitted to the Tribunal clearly established that the position of National Sales Manager was subsumed into the General Manager's position. Mr. Hudson when asked the following question during examination-in-chief as to how he became aware of the redundancy, had this to say:



Q ... how did you become aware?

A Well, my superiors called me to a meeting to let me know because of the performance of the Division in terms of meeting its profitability that the position of Sales Manager would be made redundant and that, I, in my position, will now have to take on the responsibilities of Sales Manager...

47. The following questions were also asked of Mr. Hudson during cross examination and he had this to say:

Q Does the position of Sales Manager still exist?

A No.

Q Who is operating as the Sales Manager?

A I am.



48. It is our view that the Company has a right to manage its operations as it deems appropriate in order to achieve its organizational goals and objectives, however, it ought to be cognizant of the manner in which such exercise is being carried out.

49. Hence, the second question to be resolved is whether the Company observed the proper procedures in terminating the employment of Mr. Ralston Small on the grounds of redundancy. Mr. Hudson gave evidence that he knew of the redundancy a week or a week and a half before Mr. Small's termination as he was the one who had to execute, meaning handed Mr. Small the letter of termination as he reported directly to him as General Manager. Mr. Hudson also testified that on July 13, 2018 he had a meeting with Mr. Small, the same day he handed him the letter terminating his employment by reasons of redundancy.

50. What the Tribunal finds quite surprising is the fact that on July 12, 2018 Mr. Small was summoned to a credit rating meeting, a day prior to being given the letter of termination by reasons of redundancy. This meeting management deemed very important. Mr. Small was never told that there was going to be a redundancy exercise which would have resulted in his position being made redundant. The meeting ended without one word about redundancy. On the following day July 13, 2018 he was called to the office by Mr. Hudson whose evidence is that he and Mr. Small had discussions that surrounded the Company's operation and targets for the Sales Reps seeing that he *may* be taking over as Sales Manager so he was following up as to where Mr. Small was with those targets. He said it was at that point he told Mr. Small that his position was made redundant and handed him a sealed letter, which he (Mr. Small) opened and read the contents. The letter was dated July 12, 2018. The Tribunal finds that even at this

juncture there were no discussion regarding a redundancy exercise in accordance with good industrial relations practice. In light of this, the Tribunal accepts Mr. Small's evidence when he said that he was very shocked when he was informed on July 13, 2018 that his position was made redundant.

51. Mr. Karl Wynter, the Chief Operating Officer and the person who terminated Mr. Small's employment by reason of redundancy at no time informed Mr. Small of a redundancy exercise. As a matter of fact Mr. Wynter's evidence is that he could not give an exact time line as to when he became aware of the redundancy but said it was near to the time of the 12th or 13th of July, 2018. His evidence was that he was aware of the impending redundancy because of his position but he did not have a conversation with Mr. Small about it. Mr. Wynter's letter (Exhibit 6) which is a letter he wrote to Mr. Duncan categorically states that there was no discussion with Mr. Small about the restructuring exercise. There could not have been any discussion with Mr. Small as according to Mr. Wynter's evidence he would have known about the redundancy approximately the same time Mr. Small did.
52. The Tribunal has noted that the HR Department was not informed of the pending redundancy of Mr. Small which prevented them from carrying out functions that relates to a redundancy exercise. It is Ms. Vincent's evidence that she was not aware of documentation regarding redundancy. She became aware of the redundancy on July 11, 2018 a day prior to Mr. Small receiving the letter. The Tribunal has accepted the evidence as was given by Ms. Vincent that the company embarked on a redundancy exercise; however, this was three (3) months after Mr. Small's position was made redundant.
53. Mr. Michael Subratie, Managing Director gave evidence that he met with Mr. Small on two occasions where he discussed with him that his position would be made redundant. Mr. Subratie's evidence is that his Administrative Assistant, Ms. Drummond was present on these occasions. The Tribunal, however, did not have the benefit of hearing from his Assistant neither were there the Minutes of these Meetings, if any. Of importance is the evidence before the Tribunal that Mr. Small was on vacation leave on July 6, 2018, a day Mr. Subratie claimed that he met with Mr. Small and discussed the redundancy. Mr. Subratie's evidence is that he and his Assistant kept records of all of their calendar of events and meetings; however, this record was never presented to the Tribunal.
54. What the Tribunals finds noteworthy is the fact that Mr. Subratie in evidence stated that he did not discuss with either Mr. Wynter, Chief Operating Officer or Mr. Hudson, General Manager and Mr. Small's supervisor that Mr. Small's position was going to be made redundant. Mr. Subratie in cross examination by Mr. Duncan when asked the following question had this to say:



- Q Did Mr. Wynter meet with Mr. Small prior to July 12*
- A Many a times, I am sure*
- Q In regards to the restructuring of the business*
- A yes, many times, we all did*

55. Mr. Wynter, the person who signed the termination letter evidence is that he could not give an exact time line as to when he became aware of the redundancy but said it was near to the time of the 12th or 13th of July, 2018, Mr. Hudson, on the other hand who reports to Mr. Wynter said he knew a week or a week and a half prior to the redundancy and Ms. Vincent's evidence is that she became aware that Mr. Small's position was going to be made redundant on July 11, 2018. This the Tribunal finds incredulous.
56. Based on the facts gleaned, the Tribunal has concluded that there was no consultation or communication with Mr. Small leading up to the redundancy. This was corroborated in the evidence given by the Company's witnesses. Section 19 of the Labour Relations Code states that:

19. "Communication and consultation

Communication and consultation are necessary ingredients in a good industrial relations policy as these promote a climate of mutual understanding and trust which alternately result in increased efficiency and greater job satisfaction. Management and workers or their representatives should therefore co-operate in promoting communication and consultation within the organization."

57. The Labour Relations Code expressly recognizes the principles that *"work is a social right and obligation and not a commodity and that dignity must be accorded and that industrial relations should be carried out within the spirit and intent of the code.*
58. Section 3(4) of the Labour Relations and Industrial Disputes Act mandates the Industrial Disputes Tribunal to take the provision of the Labour Relations Code into account where relevant.
- "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."*



59. For the Company to have considered the meetings Mr. Subratie claimed he had with Mr. Small where he discussed the issue of redundancy as having communication and consultation with Mr. Small showed a lack of appreciation for the Labour Relations Code. In addition, we are of the view that this does not satisfy the requirement under Paragraph 19 of the Labour Relations Code, which requires the Company to inform the Union and in this case the worker when the need arises for redundancy and make genuine efforts to avoid such redundancies.

60. It is the contention of the Dismissed Worker that there was no decision to effect a redundancy communicated to him as he was never invited to discuss same. Prior to his termination Mr. Small was not informed about the Company having a redundancy exercise. Based on the evidence presented the Tribunal has concluded that redundancy was a *fait accompli* as the Company had already taken the decision to make Mr. Small's position redundant before the meeting with him on July 13, 2018. This the Tribunal finds did not satisfy the requirement of Section 11 of the Labour Relations Code which states:

11. Security of Workers

Recognition is given to the need for workers to be secure in their employment, and management should in so far as is consistent with operational efficiency:

- (i) ...;*
- (ii) in consultation with workers or their representatives take all reasonable steps to avoid redundancies;*
- (iii) in consultation with workers and their representatives evolve a contingency plan with respect to redundancies so as to ensure in the event of redundancy that workers do not face undue hardship. In this regard, management should endeavour to inform the worker, trade unions and the Minister responsible for labour as soon as the need may be evident for such redundancies;*
- (iv) Actively assist workers in securing alternative employment and facilitate them as far as is practicable in this pursuit.*



jThe dismissal letter given to Mr. Small gave no indication that consultation took place between

61. The dismissal letter given to Mr. Small gave no indication that consultation took place between Management and Mr. Small neither was there any evidence to support such exercise. It is the Company's submission that in or around August 2018 they lost SM Jahleel Agency/distributorship,

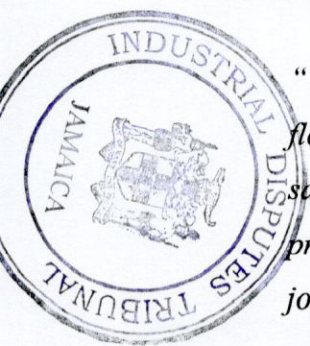
however, Mr. Small's position was made redundant in July 2018. The Tribunal has also noted the fact that with the acquisition of SM Jahleel the management of the beverage sales force was vested primarily in the General Manager for the Merchandise Division, Mr. Rudyard Hudson. In Ms. Vincent's evidence she said that two positions *may* have been made redundant around the time Mr. Small's position was made redundant but there was no evidence to substantiate that that was so. Mr. Hudson said that no position in his department was made redundant at the time of Mr. Small's redundancy.

62. Mr. Hudson further gave evidence when asked by Mr. Mullings that it was contended by Mr. Small, or on his behalf that he was terminated due to his frank views and not because of redundancy, he said that *"Ralston is a man not short of words, and he speaks his mind to how he sees things. What I was told, as I mentioned about the redundancy, it was to reduce costs, and that I would need to assume the responsibilities of National Sales Manager along with my current work load."* Evidently, Mr. Hudson's duty was merely to execute the termination. This leaves the Tribunal no choice but to conclude that the issue of Mr. Small's forthrightness as given in evidence by both the Company and Mr. Small might have also influenced the decision to make his position redundant at the time they did.
63. The Tribunal has concluded that the way in which Mr. Small was terminated was unconscionable and unreasonable and showed very little if any concern for the dignity and human feeling of him as a worker. The Company would want the Tribunal to believe that this was not intended as the effect should have been foreseeable by Mr. Small.
64. There was no evidence presented by the Company of any safety or security issue to prevent the Company from advising Mr. Small that his position would be made redundant prior to them effecting the exercise.
65. The Tribunal accepts as the truth Mr. Hudson's testimony that Mr. Small told him that 'he had a car rental business.' This was borne out in the evidence (Exhibit 28 and 28a) invoices that were signed by Mr. Small. The argument about the business being his son's was not accepted as he admitted to signing the invoices.



66. Mr. Mullings in his submissions intimated that Mr. Small accepted and ratified the actions of the Company and cannot come back later over six (6) weeks with a change of heart. Mr. Small in correspondence to the Company after his redundancy questioned the calculation of his payment and the address to which the redundancy letter was written, both verbally and in writing, but he did not mention his dissatisfaction with the redundancy. Mr. Small was paid his full redundancy amount, properly calculated (Exhibit 14) in keeping with his four (4) years of service which included Notice Pay, Vacation Leave Pay etc. and he received a copy of said calculation. The Company was made aware of Mr. Small's objection to his termination by way of letter dated August 28, 2018 which was before the final payment (sales incentives) of February 18, 2019 was made.
67. The Company never really raised the issue of waiver as a matter of contention during the eliciting of the evidence. The evidence presented by the Company was not to prove waiver but rather to show that Mr. Small was satisfied with his termination package. There is no evidence of a settled intention by Mr. Small to abandon his legal right to be re-instated.
68. The Tribunal, taking into consideration all the circumstances of this dispute finds that the Company did not follow the proper consultative process thus rendering the dismissal on the grounds of the redundancy unjustified.
69. The Tribunal in coming to its decision took into consideration the evidence of all the Company's witnesses who said that they had a good relationship with Mr. Small notwithstanding him being forthright, Mr. Small's age and the fact that Mr. Small said that he wished to be re-instated.
70. The Tribunal is guided by the Judgement of the Lords of the Judicial Committee of the Privy Council Appeal No. 69 of 2003 in Jamaica Flour Mills v. Industrial Disputes Tribunal and National Workers Union where Lord Scotty Foscoate at Paragraph 24 made the following pronouncement on the matter of re-instatement:

"... their Lordship would observe, however, that the concept of re-instatement has some flexibility about it. Reinstatement does not necessarily require that the employee be placed at the same desk or machine or be given the same work in all respects as he or she had been given prior to the unjustifiable dismissal. If, moreover, in a particular case, there really is no suitable job into which the employee can be re-instated, the employer can immediately embark upon the



process of dismissing the employee on the grounds of redundancy, this time properly fulfilling his obligations of communication and consultation under the Code ...”

71. Accordingly, as a result of unjustified dismissal of Mr. Small, the Tribunal awards as follows:

AWARD:

72. The Tribunal in accordance with the provision of Section 12 (5) (c) (i) of the Labour Relations and Industrial Dispute Act hereby awards that Mr. Ralston Small be re-instated effective July 28, 2020, with eighty three (83) weeks salary less any amount previously paid as redundancy and notice.

The Member appointed under Section 8(2) (c) (ii) is not in agreement with the Award and her opinion is appended hereto.

DATED THIS 30th DAY OF JUNE, 2020.

Justice Marjorie Cole-Smith (Retd.)
Chairman

Chelsie Shellie-Vernon
Member

Witness:

Royette Creary (Miss)
Secretary to the Division



IDT 20/2019

INDUSTRIAL DISPUTES TRIBUNAL

MINORITY AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

T. GEDDES GRANT (DISTRIBUTORS) LIMITED
(THE COMPANY)

AND

MR. RALSTON SMALL
(THE DISMISSED WORKER)



REFERENCE:

By letter dated June 11, 2019 the Honourable Minister of Labour and Social Security in accordance with Section 11A 1(a) (i) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

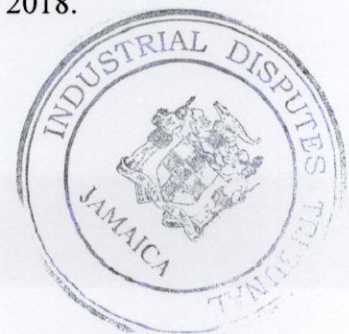
"To determine and settle the dispute between T. Geddes Grant (Distributors) Limited on the one hand and Mr. Ralston Small on the other hand over the termination of his employment by reason of redundancy."

The preliminaries are mentioned in the Award document to which this decision is attached, so there is no need for me to duplicate that record.

MINORITY AWARD:

The Member has read the Award of the Chairman appointed under Section 8 (2)(c) (i) and the Member appointed under Section 8(2)(c)(iii) and is in agreement with their findings save and except:

1. The Member is not in agreement with the last sentence in paragraph 49 where the Chairman and Member accepts that Mr. Small's evidence that he was shocked when he was informed on July 13, 2018 that his position was made redundant. Mr. Small had an accounting background and as an Officer of the Company he received the Profit & Loss results of the Company on a monthly basis. Hence, he would have known that the Company was having serious financial challenges. However, the fact is that Mr. Small was not officially informed about a redundancy exercise and definitely not prior to the action of his position being made redundant.
2. The Member has taken note of the last sentence in paragraph 61 and feels obliged to express her dissent from the views expressed therein. There is no evidence given that it was because of Mr. Small's forthrightness why his position was made redundant at the time it did. The evidence presented was that the Company was embarking on a redundancy exercise in 2018 due to the upcoming loss of SM Jahleel Agency and the merger/consolidation with Musson Jamaica. Ms. Vincent in her evidence stated that two (2) other positions were made redundant in July and by the end of the year about one hundred (100) positions had been made redundant in the Company.
3. The Member must point out that the meetings that Mr. Subratie claimed that he had with Mr. Small seemed to have been informal meetings and therefore would not cover communication and consultation.
4. Even though Mr. Small has asked for reinstatement it is not recommended as the Company would now have been completely restructured due to losing SM Jahleel Agency finally in August 2018 and the merger/consolidation with Musson Jamaica in November 2018.



5. The member found that because of the lack of communication to Mr. Small prior to making his position redundant he was unjustifiably dismissed.

MINORITY AWARD:

Mr. Ralston Small should be paid an additional nine (9) months basic pay as full and final settlement.

DATED THIS ^{3rd} DAY OF June 2020

Jacqueline Irons

.....
Jacqueline Irons, J.P.

Member

Witness:

R. Creary

.....
Royette Creary (Miss)
Secretary to the Division

