

COMMONWEALTH OF THE BAHAMAS

No. IT/NR/NES/057

IN THE INDUSTRIAL TRIBUNAL

Year: 2021

NORTHERN REGION

In the matter of
THE INDUSTRIAL RELATIONS ACT, Cap. 321 [**Section 58(1)(d)**]

BETWEEN:-

RYAN PORTER

Applicant

AND

TAINO BEACH RESORT

Respondent

BEFORE: Her Honour, Helen J. Almorales-Jones, Vice-President

APPEARANCES: Applicant, pro se & Vanessa Neely (Resort Administrator), for the Respondent

ORDER

WHEREAS:-

- 1) By a **Certificate of Referral** dated the 16th August, 2021 (received on the 17th September, 2021), the Honourable Minister of Labour referred this trade dispute to the Industrial Tribunal ("the Tribunal");
- 2) The Applicant filed a **Form A** (Originating Application) on the 22nd September, 2021;
- 3) The Respondent filed a **Form D** (Notice of Appearance) on the 1st October, 2021;
- 4) The Respondent filed a **Form E** (Defence) on the 15th October, 2021;
- 5) Both the **Form D** (Notice of Appearance) and **Form E** (Defence) filed by the Respondent did not provide the name and address of its Representative;

- 6) On the 2nd November, 2021, the Tribunal served the Respondent with a **Form F** (Notice for Further and Better Particulars), issued on the 1st November, 2021, requesting that the Respondent furnish the Tribunal with:-
- i. The name of the person who will be representing the Respondent in the matter;
 - ii. Proof that the Respondent's Board of Directors authorized the named person to represent the Respondent in the proceedings before the Tribunal;
 - iii. A copy of its Certificate of Incorporation;
 - iv. The name of its President;
 - v. The name and address of its registered office;
 - vi. A copy of any employment contract(s) signed by the parties; and
 - vii. A copy of any Employee Handbook;
- 7) In response to the **Form F** (Notice for Further and Better Particulars), the Respondent:-
- advised, by letter dated 4th November, 2021 (received on the 5th November, 2021) that:-
 - *Vanessa Neely* will be representing the Respondent in the matter;
 - *Soren Petersen* is the President of the Respondent; and
 - the Respondent's registered office is *Chancery House, The Mal Drive, P.O. Box F-42578, Freeport, Grand Bahama, Bahamas*; and
 - provided the Tribunal with copies of:-
 - Minutes of a meeting of its Board of Directors on the 4th November, 2021, authorizing *Vanessa Neely* or *Sean Basden* or *Peter Collins* to appear as its Representative in this matter and in any matters before the Tribunal;
 - its Certificate of Incorporation;
 - the employment contract the parties had signed; and
 - its Employee Handbook;
- 8) The Tribunal conducted a Case Management hearing of this matter at 10:00 a.m. on the 9th November, 2021;
- 9) The Applicant appeared pro se and *Vanessa Neely* (Resort Administrator) appeared for the Respondent;
- 10) Both parties advised that 2 conciliation meetings were held at the Department of Labour and the issue relevant to the dispute was not resolved;

11) According to the **Report of a Trade Dispute** the Applicant filed with The Department of Labour on the 6th April, 2021, the *issue relevant to the dispute* was:-

"I, Ryan Porter, is reporting a matter about my rotation. My rotation suppose (sic) to be every 3 weeks and everytime (sic) it's my rotation my supervisor never puts me on the schedule and for months now every time i (sic) go check what's the problem, Mrs. Cooper never is (sic) could say why. Mrs. Cooper always says, *I'll call*".

12) According to the **Form A** (Originating Application) the Applicant filed with the Tribunal on the 22nd September, 2021, the *grounds for his application* were:-

"I was place (sic) on the roster to work but when i (sic) showed up to work i (sic) was told by my supervisor Ms. Evelyn Cooper that she would call me when she was ready for me to come back to work. An (sic) this happe (sic) like 3 times. After experiecing (sic) this i (sic) went to labour to find out my rights. And i (sic) was never giving (sic) a termination letter".

13) The Tribunal questioned the parties, who advised that:-

- On the **25th January, 2019**, they signed a written employment contract, made between **Taino Beach Resort & Clubs ("The Employer")** and **Ryan Porter ("The Employee")**, which provided, inter alia, that the Applicant "*starts work of January 16th, 2019*" and "*The term of the contract shall be of one(1) year's duration*";
- The Applicant left the Respondent's employ after Hurricane Dorian struck The Bahamas on the **1st September, 2019**, and he left Grand Bahama island;
- The Applicant started working for the Respondent under a new, oral employment contract several weeks before the first COVID-19 Pandemic Grand Bahama Lockdown on the **19th March, 2020** (around mid-February 2020, according to the Applicant);
- On the **20th March, 2020**, the Respondent furloughed its employees, including the Applicant;
- The last date the Applicant physically worked for the Respondent was around the **9th April, 2021**, some 3 days after he had filed this trade dispute against the Respondent with The Department of Labour; and
- Sometime before the second conciliation meeting was held at The Department of Labour, the Applicant declined the Housekeeping Manager's (*Evelyn Cooper*) request to schedule him to work for the Respondent and told her that he was pursuing the Labour case instead (because he considered himself terminated by the Respondent);

- 14) The Respondent, **Taino Beach Resort**, was part of the trade name of the Applicant's employer, which was a limited liability company named **Taino Beach Limited, D/B/A Taino Beach Resort & Clubs**;
- 15) The parties working relationship was governed by a verbal employment contract;
- 16) The trade dispute the Applicant filed against the Respondent complained that the Respondent was not scheduling him to work, but did not allege that he had been wrongfully dismissed or unfairly dismissed or dismissed by reason of redundancy by the Respondent;
- 17) In *Island Hotel Company Limited v. John Fox*, IndTripApp No. 54 of 2017 (Bahamas Court of Appeal website), The Bahamas Court of Appeal held that:- the cumulative effect of **Sections 68(2), 72 and 73 of The Industrial Relations Act (I.R.A.)** is that the Tribunal has jurisdiction to hear **only** matters the Minister refers to it; no provisions in The I.R.A or **The Employment Act (E.A.)** permit the Tribunal to amend an Originating Application to allow a party to proceed with a claim not approved and referred by the Minister; and the Tribunal has no inherent jurisdiction to allow an amendment of a trade dispute referred by the Minister;
- 18) The Bahamas Court of Appeal followed this dicta in *Bahamas Technical Vocational Institute v. Essel Deleveaux-Spruill*, IndTripApp No. 197 of 2019; *First Caribbean (International) Bank v. Byron Miller*, IndTripApp No. 40 of 2018; and *Helena McCardy v. John Bull Limited*, IndTripApp No. 20 of 2019; (Bahamas Court of Appeal website);
- 19) Even if the circumstances of the case showed that the Respondent had dismissed the Applicant by reason of redundancy, the Applicant is not entitled to compensation under **Section 26B of The Employment (Amendment) Act, 2017**, S.I. No. 5 of 2017, as he was not "*continuously employed*" with the Respondent "*for one year or more*"; and
- 20) For these several reasons, it appears that further proceedings are unnecessary and the Tribunal therefore dismisses this matter pursuant to **Section 58(1)(d) of The Industrial Relations Act, Cap. 321**.

DATED: This 9th day of November, 2021.



Her Honor, Helen J. Almorales-Jones,
Vice-President

Section 64 of The Industrial Relations Act

- (1) Subject to this Act, any party to a matter before the Tribunal is entitled, as of right, to appeal to the Court of Appeal on any of the following grounds –
- (a) that the Tribunal had no jurisdiction in the matter but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Tribunal had been formally taken at some time during the progress of the matter before the making of the order or award;
 - (b) that the Tribunal has exceeded its jurisdiction on the matter;
 - (c) that the order or award has been obtained by fraud;
 - (d) that any finding or decision of the Tribunal in any matter is erroneous in point of law;
 - (e) that the order or award of damages is inordinately high or inordinately low; or
 - (f) that some other specific illegality not mentioned in paragraphs (a) to (e) and substantially affecting the merits of the matter has been committed in the course of the proceedings.
- (2) On the hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power –
- (a) to confirm, modify or reverse the order or award appealed against;
 - (b) if the Court of Appeal confirms the order or award appealed against, to order that there shall be included in the sum which is the subject of the appeal, interest at the rate of 10 per centum on the whole or any part of the sum, from the date of the order or award appealed against;
 - (c) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held; or
 - (d) to order a new hearing on any question without interfering with the finding or decision upon any other question, and the Court of Appeal may make such final or other order (other than an order as to costs) as the circumstances of the matter may require.
- (3) The Court of Appeal may, in any matter brought on appeal before it, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred, although it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.

Section 11(2) of The Court of Appeal Rules

- 11(2) In the case of an appeal from an award or determination by an arbitrator, tribunal or such other authority, a notice of appeal shall be filed and a copy thereof served by the appellant upon all parties directly affected by the appeal within 6 weeks from the date on which the award or determination was made.