

INDUSTRIAL TRIBUNAL

**COURT #2 FREEPORT INSURANCE CENTER, 21B WEST MALL & POINCIANA
DRIVE, FREEPORT, GRAND BAHAMA, COMMONWEALTH OF THE BAHAMAS**

Before

MRS. HELEN J. ALMORALES-JONES (VICE-PRESIDENT)

(SITTING ALONE)

VALENTINE MUNNINGS

APPLICANT

SAWYERS FRESH MARKET

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Pro se
Freeport, Grand Bahama
The Bahamas

For the Respondent

Counsel, Mrs. Aisha Z. Ferguson
McKinney, Bancroft & Hughes
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 21st November, 2022, **Valentine Munnings** ("the Applicant") filed a **Report of a Trade Dispute** against **Sawyer's Fresh Market** ("the Respondent") with The Department of Labour in Grand Bahama, The Bahamas;
- 2) The Report of a Trade Dispute stated that the issues relevant to the dispute were *Severance, Overtime pay and Notice pay*;
- 3) By a **Certificate of Referral** dated the 16th December, 2022 (received on the 6th February, 2023), the Honourable Minister of Labour & Immigration referred the said trade dispute to the Industrial Tribunal, Northern Region, ("the Tribunal");
- 4) On the 6th February, 2023, the Tribunal served the **Applicant** with notice of the referral;
- 5) On the 14th February, 2023, the Applicant filed a **Form A** (Originating Application) in accordance with **Rule 3(1) of The Industrial Relations (Tribunal Procedure) Rules, 2010** ("The Rules");
- 6) On the 15th February, 2023, the Tribunal served a copy of the **Form A** (Originating Application) and a **Form C** (Notice of Originating Application) on the Respondent's place of business (received by *Pandora Johnson*), in accordance with **Rule 4 of The Rules**;
- 7) The time limited by **Rule 5(1) of The Rules** for the Respondent to file a **Form D** (Notice of Appearance) expired on the 22nd February, 2023;
- 8) The **Respondent** filed a **Form D** (Notice of Appearance) on the 28th February, 2023;
- 9) The time limited by **Rule 6 of The Rules** for the Respondent to file a **Form E** (Defence) expired on the 8th March, 2023;
- 10) On the 10th March, 2023, the **Respondent** filed a **Form L** (Notice of Application for Extension of Time) applying for an extension of time to file a **Form D** (Notice of Appearance) and a **Form E** (Defence);
- 11) The **Respondent** filed a **Form E** (Defence) on the 20th March, 2023;
- 12) The Tribunal today conducted a **Case Management** hearing in this matter pursuant to **Rule 15 of The Rules**;

- 13) With the consent of the Applicant, the Tribunal accepted the reason given for the Respondent's failure to file a **Form D** and **Form E** (Defence) within the time limited by the Rules, acceded to the Respondent's **Form L** application;
- 14) The **Respondent's Counsel** undertook to e-mail the Applicant and the Tribunal the Respondent's *Staff Handbook* and the *Terms and Conditions* the Respondent alleged governed the Applicant's employment;
- 15) Both parties agreed to the following:-
- a. The Applicant served under a written employment contract; and
 - b. The Applicant held a managerial position (*Assistant Store Manager*) for the duration of the almost 8 months of his employment with the Respondent;
 - c. The Respondent dismissed the Applicant;
 - d. The issues of *Severance* and *Notice* which the Applicant wrote on The Report of a Trade Dispute Form, amount to a claim for **Wrongful Dismissal**;
 - e. The Respondent's defence to the Applicant's claim for Wrongful Dismissal was that the Respondent had just cause to summarily dismiss the Applicant pursuant to **Section 31 of The Employment Act, Cap. 321A** ("The Act") for committing a fundamental breach of the employment contract, namely *Gross Negligence*; and
 - f. The Respondent did not confront the Applicant with its belief that he had committed provides Gross Negligence and give him the opportunity to be heard before they decided to terminate him;
- 16) The **Tribunal** advised the Applicant that:-
- a. **Section 8(4) of The Act** provides that the Sections in the Act relating to the payment of **Overtime pay** do not apply to employees holding a supervisory or managerial position;
 - b. His written employment contract did not provide that the Respondent would pay him Overtime pay in his position of Assistant Store Manager; and
 - c. Therefore, his claim for Overtime pay cannot succeed unless he can prove, on a balance of probabilities, that he and the Respondent had a contractual agreement (verbal or written) for him to be paid Overtime pay;

- 17)The **Tribunal** advised the parties to consider settling the matter by the Respondent paying the Applicant 4 weeks' Notice pay because the Respondent's failure to not confront the Applicant with its belief that he had committed Gross Negligence and give him the opportunity to be heard before they decided to terminate him may affect the Tribunal finding the investigation to be reasonable;
- 18)Pursuant to **Section 58(1)(a)** of **The Industrial Relations Act, Cap. 321**, the **Tribunal** remitted the dispute to the parties for further consideration, with a view to settling or reducing the issues in dispute;
- 19)The Applicant undertook to file a **Form K** (Notice of Withdrawal) if the parties settle the matter, after which the Tribunal will mark the matter dismissed pursuant to **Rule 12(1)(a)** of **The Rules**;
- 20)The **Applicant** advised that if the matter proceeds to trial, he will testify and may call 3 witnesses on his behalf;
- 21)The **Respondent's Counsel** advised that the Respondent may call 2 witnesses in its defence;
- 22)The **parties** agreed for the witnesses to testify *viva voce* as the Applicant is a lay person and is not represented by Counsel;
- 23)The **Tribunal** estimated that the trial may last 2 days;
- 24)The **Tribunal** advised the parties that:-
 - a. **Rule 3(5)** of **The Rules** provide that a Representative appearing pursuant to **Section 57(3)** of **The I.R.A.** may submit a *Brief or Skeleton Arguments* to the Tribunal and serve a copy on the other party to the proceedings no later than 7 days prior to the commencement of the hearing; and
 - b. **Rule 3(6)** of **The Rules** provides that an unrepresented party who wishes to submit *representations in writing* for the Tribunal's consideration must do so no later than 7 days before the commencement of the hearing and at the same time serve a copy thereof on the other party to the proceedings; and
- 25)The Tribunal directed that the parties file any **List of Documents, Bundle of Documents, Brief/Skeleton Arguments** and written **Representations** with the Tribunal at least 7 days before the trial date and at the same time, serve a copy thereof on the other party;

IT IS HEREBY ORDERED THAT:-

1. The **Respondent's Counsel** e-mail the Applicant and the Tribunal the Respondent's *Staff Handbook* and the *Terms and Conditions* the Respondent alleged governed the Applicant's employment;
2. This matter be adjourned to 10:00 a.m. on Monday, 1st and Tuesday, 2nd May, 2023, for trial;
3. The parties file any **List of Documents, Bundle of Documents, Brief/Skeleton Arguments** or written **Representations** with the Tribunal at least 7 days before the trial date, namely by on or before 3:00 p.m. on Monday, 24th April, 2023; and
4. The Tribunal serves a new **Form J** (Notice of Hearing) on both parties.

AND THIS IS THE ORDER OF THE TRIBUNAL.

DATED: This 28th day of March, A.D., 2023.



**Her Honor, Helen J. Almoraes-Jones,
Vice-President**

