

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)

RUBEN JOHNSON

APPLICANT

BAHAMA ROCK

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

K. Brian Hanna, Esquire
Freeport, Grand Bahama
The Bahamas

For the Respondent

Dwayne E. Fernander, Esquire &
Counsel, Ms. Lavette Kemp
Graham Thompson
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 13th September, 2022, **Ruben Johnson** ("the Applicant") filed a **Report of a Trade Dispute** against **Bahama Rock** ("the Respondent") with The Department of Labour in Grand Bahama, The Bahamas;
- 2) According to The Report of a Trade Dispute, the issue relevant to the dispute was that the Applicant was *unfairly dismissed without being allowed to address his defence*;
- 3) By a **Certificate of Referral** dated the 13th 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 7th February, 2023, the Tribunal served the **Applicant** with notice of the referral;
- 5) The Applicant filed a **Form A** (Originating Application) on the 10th February, 2023 in accordance with **Rule 3(1)** of **The Industrial Relations (Tribunal Procedure) Rules, 2010** ("The Rules");
- 6) On the 10th 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 *Alisa Anderson*), in accordance with **Rule 4** of **The Rules**;
- 7) The **Respondent** filed a **Form D** (Notice of Appearance) on the 17th February, 2023, in accordance with **Rule 5(1)** of **The Rules**;
- 8) The **Respondent** filed a **Form E** (Defence) on the 6th March, in accordance with **Rule 6** of **The Rules**;
- 9) The Tribunal today conducted a **Case Management** hearing in this matter pursuant to **Rule 15** of **The Rules**;
- 10) Both parties agreed that the Applicant was an employee, he held a line-staff position and he was summarily dismissed by the Respondent, without notice of pay in lieu of notice or Severance/Termination pay;
- 11) At the request of the Tribunal, the Applicant identified the particulars of his claim for Unfair Dismissal as the fact that he had worked 10 hours a day, 7 days a week for 5 weeks before he fell asleep while on the job;

12)The Tribunal advised the parties to consider that:-

- a. Falling asleep while on duty after working 10 hours long shifts, 7 days a week for 5 weeks, at an arduous job may be an involuntary act and not intentional misconduct; and
- b. The Respondent may have contributed to the incident by permitting the Applicant to work such extended hours on a job that was both physically taxing and dangerous, in breach of **Section 9 of The Employment Act ("The E.A.")**, **Cap. 321A** and the Respondent's statutory duties under **The Health & Safety At Work Act, Chapter 321C**;

13)The Tribunal encouraged the parties to consider settling the matter by:-

- a. The Respondent paying the Applicant a reasonable portion of the basic award for **Unfair Dismissal** under **Section 46 of The E.A.**, which the Tribunal assessed at **\$ 10,824.00**, on terms of strict confidentiality; and
- b. The Applicant withdrawing the application by filing a **Form A** (Notice of Withdrawal);

14)Pursuant to **Section 58(1)(a) of The Industrial Relations Act, Cap. 321**, the **Tribunal** remitted the trade dispute to the parties for further consideration, with a view to settling it out of Court;

15)If the matter is not settled and proceeds to trial, the **Applicant** advised that he will testify on his own behalf;

16)The **Respondent's Counsel** advised that the Respondent may call 2 or 3 witnesses in its defence;

17)The **Tribunal** elected to receive *viva voce* testimony from the witnesses;

18)The **Tribunal** estimated that the trial may last 2 days;

19)The **Tribunal** directed that the parties file any **List of Documents** and **Bundle of Documents** at least 7 days before the trial date and at the same time, serve a copy thereof on the other party; and

20)The **Tribunal** advised the parties that **Rule 3(5) of The Rules** provides that parties may submit a *Brief or Skeleton Arguments* to the Tribunal and serve a copy on the other party no later than 7 days prior to the commencement of the hearing;

IT IS HEREBY ORDERED THAT:-

1. This matter be adjourned to 10:00 a.m. on Wednesday, 5th and Thursday, 6th July, 2023, for trial;
2. The parties file any **List of Documents, Bundle of Documents, or Brief/Skeleton Arguments** with the Tribunal at least 7 days before the trial date (by on or before 3:00 p.m. on Wednesday, 28th June, 2023) and at the same time, serve a copy thereof on the other party; and
3. The Tribunal serves a new **Form J** (Notice of Hearing) on both parties.

AND THIS IS THE ORDER OF THE TRIBUNAL.

DATED: This 29th day of March, A.D., 2023.

Helen J. Almorales Jones

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

