

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)

HERMAN DIXON

APPLICANT

EXECUTIVE MARINE MANAGEMENT LIMITED

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Justin Palacios
Labour Advocate
Freeport, Grand Bahama
The Bahamas

For the Respondent

Paul Mellor
Vice-President
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 18th January, 2023, **Herman Dixon** ("the Applicant") filed a **Report of a Trade Dispute** against **Executive Marine Management Limited** ("the Respondent") with The Department of Labour in Grand Bahama, The Bahamas;
- 2) The **Report of a Trade Dispute** stated, inter alia, that the issues relevant to the dispute were *Unfair Dismissal*, *Wrongful Dismissal* and *Breach of contract of employment*;
- 3) By a **Certificate of Referral** dated the 13th February, 2023 (received on the 24th February, 2023), the Honourable Minister of Labour & Immigration referred this trade dispute to the Industrial Tribunal, Northern Region, ("the Tribunal");
- 4) On the 28th February, 2023, the Tribunal served the **Applicant** with notice of the referral;
- 5) The Applicant filed a **Form A** (Originating Application) on the 1st March, 2023, in accordance with **Rule 3(1)** of **The Industrial Relations (Tribunal Procedure) Rules, 2010** ("The Rules");
- 6) On the 6th March, 2023, the Tribunal served a copy of the **Form A** (Originating Application) together with a **Form C** (Notice of Originating Application) and a blank **Form D** (Notice of Appearance) on the **Respondent's place of business** (received by *Paul Mellor*) in accordance with **Rule 4** of **The Rules**;
- 7) The **Respondent** filed a **Form D** (Notice of Appearance) on the 9th March, 2023, in accordance with **Rule 5(1)** of **The Rules**;
- 8) The **Respondent** failed to file a **Form E** (Defence) within the 14 days limited for so doing by **Rule 6** of **The Rules**;
- 9) On the 28th 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 E** (Defence) and a **Form E** (Defence);
- 10) The Tribunal today (11th April, 2023) conducted a **Case Management** hearing in this matter pursuant to **Rule 15** of **The Rules**;
- 11) The Tribunal acceded to the Respondent's **Form L** application and granted the Respondent an extension of time for the late filing of the **Form E** (Defence);

12)The Tribunal directed the Respondent's Representative to send the Tribunal a letter signed by the Respondent's President (*Dave Mellor*) authorizing him to represent the Respondent Company in this matter as he was not named as the Respondent's Representative in the **Form D** (Notice of Appearance) or **Form E** (Defence);

13)The Applicant's Representative gave the Tribunal and the Respondent's Representative a document quantifying the Applicant's claim against the Respondent for Wrongful Dismissal;

14)The Applicant's Representative alleged that according to an e-mail from JAN DE NUL (the contractor) to the Respondent and the termination letter the Respondent gave the Applicant (copies of which he produced to the Tribunal), the true reason for the Respondent's termination of the Applicant was *redundancy* and not because the Applicant was guilty of *Gross misconduct*, as the Respondent alleged in its **Form E** (Defence);

15)The Tribunal advised the parties that:-

- if the Applicant proved his claim for **Unfair Dismissal**, he will not be entitled to any award pursuant to **Section 46 of The Employment Act (The E.A.)**, **Cap. 321A** (3 weeks' basic pay for each completed year of service reckoning back from the date he was terminated to the date his employment commenced) because he is claiming damages for breach of an alleged oral fixed term contract for less than 1 year (from the 26th November, 2022 to the 31st March, 2023);
- the burden is on the Applicant to prove, on a balance of probabilities, that both he and the Respondent were *at idem* that the employment contract was for a definite, fixed term;
- if the Applicant meets his burden of proof, he is entitled to be paid the agreed wages for the balance of the unexpired term of the employment contract (from the 3rd January, 2023 to the 31st March, 2023), bearing in mind his duty to mitigate his damages, and not compensation under **Section 29 of The E.A.**; and
- the Respondent would not be found to have wrongfully dismissed the Applicant if it can prove, on a balance of probabilities, that:-
 - it terminated the Applicant for gross misconduct amounting to a fundamental breach of the employment contract **or** to acting in a manner that was repugnant to the Respondent's fundamental interests; **and**

- it honestly and reasonably believed, on a balance of probabilities, that the Applicant had committed the misconduct in question at the time of the dismissal and had conducted a reasonable investigation of such misconduct, except where such an investigation was otherwise unwarranted (**Section 33 of The E.A.**);

16)Both parties agreed that:-

- the Tribunal should first conduct a trial into the preliminary issue of ***Whether or not the parties had concluded an oral fixed term employment contract?***,
- if the Applicant proves this issue, on a balance of probabilities, the Tribunal will then decide ***Whether or not the Respondent had:- dismissed the Applicant because of Redundancy*** (as the Applicant alleged); or ***wrongfully dismissed the Applicant for Gross misconduct*** (as the Respondent alleged); and
- if the Applicant fails to prove the issue, the Tribunal will dismiss his application as he will not be entitled to any compensation for **Wrongful Dismissal** under **Section 29(2)(b) (i) and (ii) of The E.A.** (not having worked for 6 months or more) or for **Unfair Dismissal** under **Section 46 of The E.A.** (not having completed 1 year of service);

17)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 all the issues in dispute;

18)The Applicant's Representative advised that the Applicant will testify and call 4 witnesses on his behalf;

19)The Respondent's Representative advised that the Respondent will call 4 witnesses in its defence;

20)Both parties agreed to the witnesses giving *viva voce* testimony;

21)The Tribunal estimated that the trial may last 2 days; and

22)The Tribunal directed that the parties file their **List of Documents, Bundle of Documents** and **Brief/Skeleton Arguments** (pursuant to **Rule 3(5) of The Rules**) or **Written Representations** (pursuant to **Rule 3(6) of The Rules**), if any, with the Tribunal, at least 7 days before the trial date and at the same time, serve a copy thereof on the other party via e-mail;

IT IS HEREBY ORDERED as follows:-

1. This matter is adjourned 10:00 a.m. on Monday, 15th and Tuesday, 16th May, 2023, for trial of the preliminary issue of ***Whether or not the parties had concluded an oral fixed term employment contract?***
2. Both parties file their **List of Documents, Bundle of Documents, and Brief, Skeleton Arguments or Written Representations**, if any, with the Tribunal, at least 7 days before the first trial date (by 3:00 p.m. on Monday, 8th May, 2023) and, at the same time, serve a copy thereof on the other party via e-mail; and
3. The Tribunal serve this **Order On Directions** and a **Form J** (Notice of Hearing) on the parties' Representatives.

DATED: This 11th day of April, A.D., 2023.



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