

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)

MELONY NEWBOLD

APPLICANT

BAHAMAS MARITIME CONNEXION LTD.

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Elkenny Lockhart
Labour Advocate
Freeport, Grand Bahama
The Bahamas

For the Respondent

Constance E. McDonald, K.C.
McDonald & Co.
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 27th July, 2022, **Melony Newbold** ("the Applicant") filed a **Report of a Trade Dispute** against **Bahamas Maritime Connexion Ltd.** ("the Respondent") with The Department of Labour in Grand Bahama, The Bahamas;
- 2) By a **Certificate of Referral** dated the 9th February, 2023 (received on the 27th February, 2023), the Honourable Minister of Labour & Immigration referred the said trade dispute to the Industrial Tribunal, Northern Region, ("the Tribunal");
- 3) On the 1st March, 2023, the Tribunal served the **Applicant** with notice of the referral;
- 4) The **Applicant** filed a **Form A** (Originating Application) on the 2nd March, 2023, in accordance with **Rule 3(1)** of **The Industrial Relations (Tribunal Procedure) Rules, 2010** ("The Rules");
- 5) 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** (received by *Glenward Bain* via e-mail) in accordance with **Rule 4** of **The Rules**;
- 6) The **Respondent** filed a **Form D** (Notice of Appearance) on the 9th March, 2023, in accordance with **Rule 5(1)** of **The Rules**;
- 7) The **Respondent** failed to file a **Form E** (Defence) within the 14 days limited for so doing by **Rule 6** of **The Rules** (by the 23rd March, 2023) ;
- 8) On the 11th April, 2023, the **Applicant** filed a **Brief**, which included a **Bundle of Documents**;
- 9) The **Tribunal** today (13th April, 2023) conducted a **Case Management** hearing in this matter, pursuant to **Rule 15** of **The Rules**;
- 10)The **Applicant** today served the Respondent's Counsel with a copy of the Applicant's **Brief** and **Bundle of Documents**;
- 11)The **Respondent** today filed a **Form L** (Notice of Application for Extension of Time) to file a **Form E** (Defence);
- 12)With the consent of the Applicant's Representative, the **Tribunal** acceded to the Respondent's application for an extension of time to file a **Form E** (Defence);

- 13)The **Respondent** today filed a **Form E** (Defence), a copy of which the Tribunal served on the Applicant's Representative;
- 14)The **Respondent's Counsel** produced to the Tribunal and to the Applicant's Representative copies of:- the Applicant's resignation letter dated the 20th January, 2022; a cheque for \$ 6,813.33, which the Respondent offered to pay the Applicant, which she rejected; and a *Find Report* (6 pages) from the Respondent's *Quickbooks*, showing all payments the Respondent made to the Applicant, commencing from the 2nd August, 2009;
- 15)The **Applicant** advised that No. 11 of her **Form A** (Originating Application) incorrectly stated that she commenced employment with the Respondent in *July 2011* and should have stated from the *26th July, 2009*;
- 16)According to the **Report of a Trade Dispute Form**, the issues relevant to the trade dispute were **Overtime pay, Notice pay** and **Severance pay** (Wrongful Dismissal);
- 17)**Both parties** agreed that the Applicant worked for the Respondent under a *contract of employment* and her employment ended in *September 2021*;
- 18)The Tribunal directed the **Applicant's Representative** to provide the Respondent's Counsel with a List:-
- stating the dates of the 144 pay sheets he alleges the Respondent issued to the Applicant; and
 - identifying the 82 paysheets he is asking the Respondent to produce to the Applicant for assessment of the remainder of her claim for Overtime pay;
- 19)The Tribunal directed that the **Respondent's Counsel** provide the Applicant's Representative with copies of the requested 82 paysheets;
- 20)At the request of the Tribunal, the **Respondent's Counsel** undertook to ascertain the following information from the Respondent, namely:-
- Whether or not the parties had a written contract of employment at the time the Applicant's employment ended?;
 - Whether or not the parties' working relationship was governed by an Employee Handbook/Manual?;
 - Whether or not the Respondent took the position that all its employees were Supervisors, as the Applicant alleged?;

- Whether or not the Applicant held a supervisory position in the Respondent Company?;
- Who prepared/typed the resignation letter the Applicant signed?; and
- Whether or not the Respondent caused the Applicant to work in excess of the standard hours of work (8 hours in a day or 40 hours in a week) or on her days off (the seventh consecutive day of work without a 24 hour rest period) or on public holidays, without paying her Overtime pay in accordance with Section 10 of The E.A.?

21)The **Tribunal** identified the following as the **issues in dispute**, namely:-

- Whether or not the Applicant held a supervisory position with the Respondent?;
- If the Tribunal finds that the Applicant did not hold a supervisory position with the Respondent, whether or not the Respondent owes the Applicant Overtime pay for work performed in excess of the standard hours of work or on her days off or on public holidays?;
- Whether or not the Respondent constructively dismissed, although the Applicant had resigned from the Respondent?;
- Whether or not the employment contract was frustrated because the Respondent's primary client in Grand Bahama required that all persons working on its premises be vaccinated against the COVID-19 virus and the Applicant refused to be vaccinated for medical reasons?; and
- If the Tribunal finds that the Respondent had constructively dismissed the Applicant, was the Applicant entitled to compensation as a line staff employee [under **Section 29(2)(b)(i) and (ii) of The Employment Act, 2001, Cap. 321A ("the E.A.")**] or as an employee holding a supervisory position [under **Section 29(2)(c)(i) and (ii) of The E.A.**];

22)The **Tribunal** advised the parties that:-

- The Applicant cannot maintain her claim for *Overtime pay* if she contends that she held a *supervisory position* at the Respondent because **Section 8(4) of The E.A.** provides that the Sections in **The E.A.** relating to Overtime pay do not apply to persons holding a supervisory or managerial position;
- The Respondent appears to have a strong defence to the Applicant's claim that the Respondent had constructively dismissed her because the circumstances surrounding the end of the Applicant's employment suggest that the employment contract was "*frustrated*" and not terminated by either party; and

- The Respondent should nevertheless consider settling the Applicant's claim for *Termination/Severance pay* (Wrongful Dismissal) at the rate of a Supervisor (\$ 13,440.00) **if** it would amount to less than her claim for *Overtime pay* for 6 years of service (current claim = \$ 9,022.30 assessed from 62 paysheets and that 82 more paysheets have yet to be assessed);

23) 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;

24) The **Tribunal** recommended that the parties consider settling the matter by:-

- The Respondent paying the Applicant *pay in lieu of Notice* and *Termination pay* at the rate of a Supervisor [under **Section 29(2)(c)(i)** and **(ii)** of **The E.A.**] and the Applicant withdrawing her claim for *Overtime pay*; or
- The Applicant proceeding with her claim for *Overtime pay* and withdrawing her claim for *Wrongful Dismissal* as the Respondent has a strong defence that the contract was frustrated and not terminated by either party;

25) The **Applicant's Representative** advised that if the matter is not settled and proceeds to trial, the Applicant will testify and call 1 Witness on her behalf;

26) The **Respondent's Counsel** advised that the Respondent will call 2 Witnesses (its President & Managing Director, *Captain Glenward Bain* and *Lydia Henfield*) in its defence;

27) **Both parties** agreed to the following:-

- Within 14 days from today, the Applicant's Representative will file with the Tribunal written **Witness Statements** for the Applicant and her Witness, together with any supplemental **List of Documents** and **Bundle of Documents** and at the same time serve a copy on the Respondent's Counsel;
- Within 14 days thereafter, the Respondent's Counsel will file with the Tribunal written **Witness Statements** for the Respondent's 2 Witnesses together with any **List of Documents** and **Bundle of Documents**, and at the same time serve a copy on the Applicant's Representative; and
- The Witnesses will give further *viva voce* testimony to the Tribunal, as they deem necessary;

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

29)The Tribunal directed that the Respondent's Counsel file any **Brief or Skeleton Arguments** at least 7 days before the trial, in accordance with **Rule 3(5) of The Rules**, and at the same time serve a copy on the Applicant's Representative;

IT IS HEREBY ORDERED THAT:-

1. The **Applicant's Representative** provide the Respondent's Counsel with a List stating the dates of the 144 pay sheets he alleges the Respondent issued to the Applicant and identifying the 82 paysheets he is asking the Respondent to produce to the Applicant;
2. The **Respondent's Counsel** provide the Applicant's Representative with copies of the requested 82 paysheets;
3. The matter be adjourned to 10:00 a.m. on Monday, 12th and Tuesday, 13th June, 2023, for trial;
4. The **Applicant's Representative** file with the Tribunal written **Witness Statements** together with any supplemental **List of Documents** and **Bundle of Documents** by 3:00 p.m. on Thursday, 27th April, 2023, and at the same time serve a copy on the Respondent's Counsel;
5. The **Respondent's Counsel** file with the Tribunal written **Witness Statements** together with any **List of Documents** and **Bundle of Documents** by 3:00 p.m. on Thursday, 11th May, 2023, and at the same time serve a copy on the Applicant's Representative; and
6. The **Respondent's Counsel** file any **Brief or Skeleton Arguments** by Monday, 5th June, 2023, and at the same time serve a copy on the Applicant's Representative.

AND THIS IS THE ORDER OF THE TRIBUNAL.

DATED: This 13th day of April, A.D., 2023.



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

