

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)

COMMONWEALTH ELECTRICAL WORKERS UNION

APPLICANT

GRAND BAHAMA POWER COMPANY

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Edrondo Thompson
Union President
Freeport, Grand Bahama
The Bahamas

For the Respondent

Counsels Edward Marshall II, Esquire &
Alyvonetta Levarity
Graham Thompson
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 21st June, 2022, **Commonwealth Electrical Workers Union** ("the Applicant") filed a Report of a Trade Dispute against **Grand Bahama Power Company** ("the Respondent") on behalf of **Devon Lightbourne, Leslie Lightbourne** and **Carlan Saunders** (hereinafter referred to as "*the subject 3 employees*") at The Department of Labour in Grand Bahama, The Bahamas;
- 2) The **Report of a Trade Dispute** stated, inter alia, that:-
 - The employees' job title was *Control Room Operator*; and
 - The issues relevant to the dispute were:-
 - Industrial Agreement,*
 - Article 4, Non-discrimination;*
 - Article 13, Recruitment and Employment;*
 - Article 15, Training & Training Programs;* and
 - Article 38, Industrial Goodwill;*
- 3) By a **Certificate of Referral** dated the 27th March, 2023 (received on the 4th May, 2023), the Honourable Minister of Labour & Immigration referred this trade dispute to the Industrial Tribunal, Northern Region, ("the Tribunal");
- 4) On the 5th May, 2023, the Tribunal served the **Applicant** with notice of the referral;
- 5) The Applicant filed a **Form A** (Originating Application) on the 12th May, 2023, in accordance with **Rule 3(1)** of **The Industrial Relations (Tribunal Procedure) Rules, 2010** ("The Rules");
- 6) On the 16th May, 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 *Enide Elianor*) in accordance with **Rule 4** of **The Rules**;
- 7) On the 22nd May, 2023, the **Respondent** filed a **Form D** (Notice of Appearance) in accordance with **Rule 5(1)** of **The Rules**;
- 8) On the 30th May, 2023, the **Respondent** filed a **Form E** (Defence) in accordance with **Rule 6** of **The Rules**;
- 9) The Tribunal today (10th August, 2023) conducted a **Case Management** hearing in this matter pursuant to **Rule 15** of **The Rules**;

10)The Tribunal rejected the **Respondent's Counsel's** preliminary submission that the Applicant could not file the **Form A** (Originating Application) in its name, but should have done so in the name of the subject 3 employees;

11)The **Applicant's Representative** denied that the Respondent Counsel's suggestion that the trade dispute concerns the correct interpretation of **Articles 4, 13, 15** and **38** of the parties' Industrial Agreement and said it was a salary dispute;

12)The **Applicant's Representative** advised that:-

- the subject 3 employees held the position of *Control Room Operators*;
- they underwent the same training as other employees of the Respondent who held a different position, but performed the same or similar work (hereinafter referred to as "*the other employees*"), expecting that they would receive the same salary treatment;
- the Respondent discriminated against them by not giving them the same benefits of promotion and salary that it gave the other employees; and
- they were entitled to the same salary treatment as the other employees;

13)The **Applicant's Representative** gave the Tribunal a copy of a letter dated the 22nd October, 2014, from the Respondent's Human Resources Department to the Applicant Union's then President, which both parties said was one of several Supplemental Agreements they made to the Industrial Agreement that governed their relationship at the time;

14)The **Respondent's Counsel** said this Supplemental Agreement conferred a benefit on the employees holding the position of Control Room Operators and did not contain a *Competency-based salary progression plan*;

15)Both parties agreed that:-

- they concluded another Industrial Agreement on the 28th December, 2018;
- it contained a *Competency-based salary progression plan* for employees holding various positions, but did not include the position of *Control Room Operator*; and
- this Industrial Agreement expired in March 2023;

16)The **Tribunal advised** the Respondent that if the Union failed to include the position of *Control Room Operator* in the clause of the Industrial Agreement dealing with *Competency-based salary progression plan*, it cannot now accuse the Respondent of discriminating against the Control Room Operators by not treating their salary the same as the employees included in the clause;

- 17)The Tribunal requested that the **Applicant** produce legal authority to support its position that because the Control Room Operators performed the same or similar work as other employees who were known by a different nomenclature, the Respondent was bound to give them the same salary treatment, regardless of the differences in the terms of their respective employment contracts;
- 18)The Tribunal directed that within 14 days the **Applicant** serve the Tribunal and the Respondent's Counsel with a document particularizing:-
- the amount of money they are claiming the Respondent owes the subject 3 employees for allegedly discriminating against them in breach of their employment contracts; and
 - the method they used to calculate the figure;
- 19)Pursuant to **Rule 12(1)(d)** of **The Rules**, on the informal application of the **Respondent's Counsel**, and with no objections by the Applicant's Representative, the Tribunal granted the Respondent leave to file an amended **Form E** (Defence) within 14 days thereafter;
- 20)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 or reducing the issues in dispute;
- 21)The Tribunal advised the **Applicant's Representative** that if the matter proceeds to trial, the subject 3 employees will have to testify as witnesses;
- 22)The **Respondent's Counsel** advised that the Respondent will call 2 witnesses;
- 23)Both parties estimated that the trial may last 2 days;
- 24)Both parties agreed to file:-
- **Witness Statements** by the same date, which will stand as the evidence-in-chief of the parties' witnesses;
 - A **Statement of Facts and Issues** within 21 days from that date;
 - A **List of Documents** and **Trial Bundle of Documents** containing all agreed documents, followed by any other documents the Applicant wishes to tender into evidence and then any other documents the Respondent wishes to tender into evidence; and
- 25)The **Tribunal** advised the parties that **The Rules** require that they file any **Brief/ Skeleton Arguments** [pursuant to **Rule 3(5)**] or **Written Representations** [pursuant to **Rule 3(6)**] with the Tribunal at least 7 days before the trial date;

IT IS HEREBY ORDERED as follows:-

1. The matter is adjourned 10:00 a.m. on Tuesday, 24th and Wednesday, 25th October, 2023, for trial;
2. Within 14 days (by Thursday, 24th August, 2023), the **Applicant** serve the Tribunal and the Respondent's Counsel with particulars of:-
 - the amount of money they are claiming the Respondent owes the subject 3 employees for allegedly discriminating against them in breach of their employment contracts; and
 - the method they used to calculate the figure;
3. The **Respondent's Counsel** file any amended **Form E (Defence)** by Thursday, 7th September, 2023;
4. Both parties file a **Statement of Facts and Issues** by Thursday, 28th September, 2023, and, at the same time, e-mail a copy thereof to the other party;
5. Both parties file their **Witness Statements, List of Documents** and **Trial Bundle of Documents** by Thursday, 12th October, 2023, and, at the same time, e-mail a copy thereof to the other party;
6. Both parties file any **Brief/Skeleton Arguments** or **Written Representations** by Thursday, 19th October, 2023, and at the same time, serve a copy thereof on the other party; and
7. The Tribunal serve this **Order On Directions** and a **Form J** (Notice of Hearing) on the parties' Representatives.

DATED: This 10th day of August, A.D., 2023.

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