

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)

DION CLARKE

APPLICANT

RCL DEVELOPMENT GROUP LTD.

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Pro se
Freeport, Grand Bahama
The Bahamas

For the Respondent

Joyce B. Cooper-Bowe
Mackay & Moxey Law Chambers
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 28th March, 2023, **Dion Clarke** ("the Applicant") filed a **Report of a Trade Dispute** against **RCL Development Group Ltd.** ("the Respondent") with The Department of Labour in Grand Bahama, The Bahamas, which stated, inter alia, that the issues relevant to the dispute were *Wrongful & Unfair Termination, seeking Severance and remainder of Notice pay*;
- 2) By a **Certificate of Referral** dated the 27th April, 2023 (received on the 5th July, 2023), the Honourable Minister of Labour & Immigration referred this trade dispute to the Industrial Tribunal, Northern Region, ("the Tribunal");
- 3) In accordance with **Rule 3(1) of The Industrial Relations (Tribunal Procedure) Rules, 2010** ("The Rules"), on the 7th July, 2023, the Tribunal served the **Applicant** with notice of the referral;
- 4) The Applicant filed a **Form A** (Originating Application) on the 13th July, 2023;
- 5) On the 6th September, 2023, the Tribunal served a copy of the **Form A** (Originating Application), a **Form C** (Notice of Originating Application) and a **Form D** (Notice of Appearance) on the Respondent (received by *Tischka Bowleg*);
- 6) The **Respondent** filed a **Form D** (Notice of Appearance) on the 26th July, 2023, which stated, inter alia, that *it intended to resist the application*;
- 7) The **Respondent** filed a **Form E** (Defence) on the 10th August, 2023, which stated, inter alia, that the Respondent dismissed the Applicant on the grounds of *Gross Insubordination, Gross Negligence, Incompetence and Gross Misconduct*;
- 8) Pursuant to **Rule 15 of The Rules**, the Tribunal today conducted a **Case Management** hearing in this matter;
- 9) The **Applicant** appeared with his Counsel's Assistant and the Respondent's President (*Hilton Bowleg*) appeared with the Respondent's Counsel;
- 10) On the 1st November, 2023, the **Tribunal** refused the Applicant Counsel's request for a further adjournment of the matter as the Tribunal had twice previously adjourned the hearing – on the 12th September, 2023 (as the Vice-President had an emergency) and on the 3rd October, 2023 (at the request of both Counsels);
- 11) **Both parties** agreed that the terms of their working relationship were not governed by a written employment contract or Employee Handbook;

- 12)The **Respondent** showed the Tribunal the termination letter the Respondent gave the Applicant, dated the 14th March, 2023;
- 13)The **Tribunal** asked the parties to consider The Bahamas Court of Appeal decision of ***Frederick Ferguson v. Island Hotel Company Limited***, IndTribApp No. 249/2016, which dealt with Wrongful Dismissal on the grounds of *Gross Negligence* and then re-evaluate the strengths and weaknesses of their claim and defence;
- 14)The **Tribunal** advised the Respondent that it would be hard-pressed to prove that it had summarily dismissed the Applicant for just cause because:-
- it gave the Applicant 2 weeks' pay in lieu of notice when it terminated him; and
 - it never gave the Applicant any prior written warnings for any of the disciplinary infractions mentioned in its **Form E** (Defence);
- 15)The **Tribunal** asked the parties to consider settling the matter by:-
- the Respondent paying the Applicant the balance of **\$ 25,080** for *Wrongful Dismissal* [under **Section 29(2)(c)(i)** and **(ii)** of **The Employment Act, 2001** ("The E.A")]; and
 - the Applicant withdrawing his claim for *Unfair Dismissal* (basic award under **Section 46** of **The E.A.** assessed at \$ **16,500**, not including a compensatory award under **Section 47** of **The E.A.**);
- 16)Pursuant to **Section 58(1)(a)** of **The Industrial Relations Act, Cap. 321**, the **Tribunal** remitted the trade dispute to the parties' Counsels for further consideration, with a view to settling or reducing the issues in dispute;
- 17)The **Tribunal** ascertained that the legal issues to be determined at trial were:-
- *Whether the Respondent has proved, on a balance of probabilities, that it had just cause to summarily dismiss the Applicant for Gross Misconduct (Did it meet its statutory burden under Section 33 of The E.A.?)*; and
 - *Whether the Applicant has proved, on a balance of probabilities, that the Respondent unfairly dismissed him?*;
- 18)The Tribunal directed that the **Applicant's Counsel** provide the Tribunal and the Respondent's Counsel with further and better written particulars of the Applicant's claim for *Unfair Dismissal* within 21 days from today;
- 19)The **Applicant** said he will testify and call about 5 or 6 witnesses on his own behalf;

20)The **Respondent's Counsel** advised that the Respondent will call its President and 5 witnesses in its defence;

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

22)The **Tribunal** directed that:-

- the parties file **Witness Statements** to stand as the evidence-in-chief of their witnesses, with cross-examination and re-examination done *viva voce*;
- the Applicant file his Witness Statements first;
- the Respondent have an equal amount of time to file its Witness Statements;
- both parties file their **List of Documents** and **Bundle for Documents** by the end of the year (2023); and
- both parties file any **Brief/Skeleton Arguments** at least 7 days before the first trial date;

IT IS HEREBY ORDERED as follows:-

1. This matter is adjourned 10:00 a.m. on Monday, 22nd and Tuesday, 23rd January, 2024, for trial;
2. The **Applicant's Counsel** e-mail the Tribunal and the Respondent's Counsel **further and better written particulars of the Applicant's claim for *Unfair Dismissal*** within 21 days from today (by 3:00 p.m. on Friday, 24th November, 2023);
3. The **Applicant's Counsel** file the **Witness Statements** of the Applicant and his witnesses within 21 days from today (by 3:00 p.m. on Friday, 24th November, 2023) and at the same time serve a copy thereof on the Respondent's Counsel;
4. The **Respondent's Counsel** file the **Witness Statements** of the Respondent's witnesses within 21 days thereafter (by 3:00 p.m. on Friday, 15th December, 2023) and at the same time serve a copy thereof on the Applicant's Counsel;
5. **Both parties** file any **List of Documents** and **Bundle of Documents** by on or before 3:00 p.m. on Friday, 29th December, 2023, and at the same time serve a copy thereof on opposing Counsel;
6. Pursuant to **Rule 3(5) of The Rules**, **both parties** file any **Brief/Skeleton Arguments** with the Tribunal at least 7 days before the first trial date (by 3:00 p.m. on Monday, 15th January, 2024) and at the same time serve a copy thereof on opposing Counsel; and

7. The **Tribunal** serve this **Order On Directions** and a **Form J** (Notice of Hearing) for trial on the parties' Counsels.

DATED: This 3rd day of November, A.D., 2023.

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