

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)

LARS PETTERSON

APPLICANT

SAWYER'S FRESH MARKET

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Max Julien, Esquire
Deleveaux Godet & Co.
Nassau, New Providence
The Bahamas

For the Respondent

Counsel, Aisha Z. Ferguson
Oakwood Law Chambers
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 23rd October, 2022, **Lars Petterson** ("the Applicant") filed a **Report of a Trade Dispute** against **Sawyers Fresh Market** ("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 and Unfair Dismissal*;
- 2) By a **Certificate of Referral** dated the 11th August, 2023 (received on the 14th September, 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 15th September, 2023, the Tribunal served the **Applicant** with notice of the referral;
- 4) The Applicant filed a **Form A** (Originating Application) on the 15th September, 2023;
- 5) On the 15th 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 *Ivonnya Charlton*);
- 6) On the 21st September, 2023, the **Respondent** filed a **Form D** (Notice of Appearance) which stated, inter alia, that *it intended to resist the application and its Representative was Mrs. Aisha Z. Ferguson, of M^cKinney, Bancroft & Hughes*;
- 7) On the 10th October, 2023, the **Respondent** filed:-
 - a **Form P** (Notice of Change of Address) which stated, inter alia, that *it was now represented by Aisha Z. Ferguson, of Oakwood Law Chambers*; and
 - an amended **Form D** (Notice of Appearance) which stated, inter alia, that *it intended to resist the application and the name of its Representative was Mrs. Aisha Z. Ferguson (Oakwood Law Chambers)*;
- 8) On the 11th October, 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), which stated, inter alia, that the Respondent dismissed the Applicant on the grounds of *Gross Negligence warranting summary dismissal*;

- 9) Both the **Form D** (Notice of Appearance) and **Form E** (Defence) filed by the Respondent stated that its name was *Sawyer's Fresh Market Limited*;
- 10) Pursuant to **Rule 15** of **The Rules**, the Tribunal today conducted a **Case Management** hearing in this matter;
- 11) The Applicant and his Counsel appeared virtually (via ZOOM) and the Respondent's Counsel appeared in person;
- 12) **Both parties** agreed that they had signed a written employment contract;
- 13) The **Respondent's Counsel** undertook to confirm if the Respondent gave the Applicant its Employee Handbook and if it applied to the Applicant;
- 14) The **Respondent's Counsel** produced to the Tribunal the parties' employment contract dated the **????** and the termination letter the Respondent gave the Applicant, dated the 30th September, 2022;
- 15) 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 re-evaluate the strengths and weaknesses of their claim and defence;
- 16) The **Applicant's Counsel** advised that:-
- the Applicant was willing to settle his claims against the Respondent for Wrongful and Unfair Dismissal for roughly \$ 150,000.00;
 - he assessed the Applicant's claim for Wrongful Dismissal at \$ 31,200.00 and claim for Unfair Dismissal at \$ 23,400.00 (\$ 17,550 for Basic award and \$ 5,850 for Compensatory award); and
 - the Applicant was claiming between \$ 120,000 to \$ 130,000 for the Commission he would have earned had he not been terminated;
- 17) The **Tribunal** advised that the parties that it assessed the Applicant's minimum statutory entitlement for Wrongful Dismissal and Unfair Dismissal under **The Employment Act, Cap. 321A** ("The E.A.") at:-
- \$ 35,022.00 for *Wrongful Dismissal* under **Section 29(2)(c)(i)** and **(ii)**; and
 - \$ 16,200.00 for a basic award for *Unfair Dismissal* under **Section 46**, not including a compensatory award under **Section 47**;

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

- the Tribunal must hear and determine matters brought before it pursuant to **The E.A. [Section 12 of The Industrial Relations (Amendment) Act, 2017, which amended Section 55 of The Industrial Relations Act, Cap. 321]**;
- the Tribunal therefore has no jurisdiction to hear and determine a common law action for damages for Wrongful Dismissal, which is the nature of his claim for \$ 120,00 to \$ 130,000 for commission the Applicant would have earned had he not been dismissed; and
- a more reasonable settlement would be in the range of \$ 51,000 to \$ 57,000;

19)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;

20)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?;*

21)The **Applicant's Counsel** advised that the Applicant will testify and call 3 witnesses on his own behalf;

22)The **Respondent's Counsel** advised that the Respondent will call 3 witnesses in its defence;

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

24)**Counsels** for both parties agreed to file:-

- **Witness Statements** at least 21 days before the first trial date, which will stand as the evidence-in-chief of their witnesses, with cross-examination and re-examination to be done *viva voce*;
- any **List of Documents** and **Bundle for Documents** at least 14 days before the first trial date; and
- 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 **Wednesday, 31st January, 2024**, and **Thursday, 1st February, 2024**, for trial;
2. Both parties file their **Witness Statements** by on or before 3:00 p.m. on Tuesday, 9th January, 2024, and at the same time serve a copy thereof on opposing Counsel;
3. Both parties file any **List of Documents** and **Bundle of Documents** by on or before 3:00 p.m. on Wednesday, 17th January, 2024, and at the same time serve a copy thereof on opposing Counsel;
4. Pursuant to **Rule 3(5)** of **The Rules**, both parties file any **Brief/Skeleton Arguments** with the Tribunal by 3:00 p.m. on Wednesday, 24th January, 2024, and at the same time serve a copy thereof on opposing Counsel; and
5. 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**