

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)

HERLENE TILLACH

APPLICANT

TAINO BEACH LIMITED

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Justin Palacious
Labour Advocate
Freeport, Grand Bahama
The Bahamas

For the Respondent

Vanessa Neely
Resort Administrator
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 21st September, 2022, **Herlene Tillach** ("the Applicant") filed a **Report of a Trade Dispute** against **Taino Beach 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 *Wrongful Dismissal, Unfair Dismissal, Severance pay, Vacation pay, Notice pay, Constructive Wrongful Dismissal and Constructive Unfair Dismissal*;
- 3) By a **Certificate of Referral** dated the 27th October, 2022 (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 15th 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 *Jullian Watkins*) in accordance with **Rule 4** of **The Rules**;
- 7) The **Respondent** filed a **Form D** (Notice of Appearance) on the 23rd May, 2023, and a **Form E** (Defence) on the 6th June, 2023, in accordance with **Rules 5(1)** and **6** of **The Rules** respectively;
- 8) The Tribunal today (26th June, 2023) conducted a **Case Management** hearing in this matter pursuant to **Rule 15** of **The Rules**;
- 9) On the informal application of the **Respondent**, and with no objections by the Applicant's Representative, the Tribunal granted the Respondent leave to file an amended **Form D** (Notice of Appearance) indicating:- that the Respondent intended to resist the application; the correct name of the Respondent (*Taino Beach Limited*) and the name of the Respondent's Representative;
- 10) The **Applicant's Representative** advised that the Applicant's claim for Notice pay and Severance pay is included in her claim for Wrongful Dismissal and she is not proceeding with her claims for *Constructive Wrongful* and *Unfair Dismissal*;

- 11) The **Applicant's Representative** gave the Tribunal and the Respondent's Representative a document quantifying the Applicant's claims against the Respondent for Wrongful Dismissal at \$ 7,150 and for Unfair dismissal at \$ 15,675;
- 12) The Tribunal directed the **Applicant's Representative** to e-mail the Tribunal and the Respondent's Representative with further and better particulars of the circumstances surrounding the end of her employment and of the alleged unfairness of her dismissal, which was not set out in her;
- 13) The Tribunal directed the **Respondent's Representative** to e-mail the Tribunal and the Applicant's Representative:-
- the parties' duly executed *employment contract*;
 - the *Employee Handbook* in force on the date of the Applicant's dismissal (20th September, 2022); and
 - proof that the Respondent paid the Applicant 4 weeks' Vacation pay from the 13th year of her employment (16th February, 2016 to 15th February, 2017) until she was dismissed on the 20th September, 2022, including pro-rated Vacation pay for the incomplete year of her service;
- 14) The Applicant's Representative advised that the Applicant maintains that:-
- the incident between her and her Supervisor took place in the heat of the moment;
 - her conduct did not rise to the level of Gross Misconduct justifying her summary dismissal; and
 - the Respondent did not conduct a reasonable investigation into the matter because the termination letter (dated the 20th September, 2022) stated that the Applicant *verbally insulted the supervisor, flew up in her face with a balled fist ready to assault her and threatened to physically assault the supervisor wherever she saw her off property*, but the Respondent's Form E (Defence filed on the 6th June, 2023), stated that the Applicant *stood in the supervisor's face, was close enough to touch her and indeed did touch her on the nose, threatening to do her bodily harm if she saw her in public*;
- 15) The Tribunal advised the parties that:-
- if the Applicant fails to prove her claims of Wrongful Dismissal and Unfair Dismissal, she will not be entitled to any money;
 - if she proves her claim for Wrongful Dismissal, she is entitled to \$ 7,155.20 under Section 29(2)(B)(i) and (ii) of The Employment Act, Cap. 321A ("The E.A."); and
 - if she proves her claim for Unfair Dismissal Wrongful Dismissal, she is entitled to \$ 14,860.80 under Section 46 of The E.A.;
- 16) The parties agreed to enter settlement talks from now until the 14th July, 2023;

- 17) 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 all the issues in dispute;
- 18) The Applicant's Representative advised that if the matter is not settled, the Applicant will testify and call 1 witness on her behalf;
- 19) The Respondent's Representative advised that the Respondent may call about 3 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;
- 22) The Tribunal directed that the parties file their **List of Documents** and **Bundle of Documents** at least 14 days before the trial date; and
- 23) The Tribunal directed that the parties file any **Written Representations** pursuant to **Rule 3(6)** of **The Rules** at least 7 days before the trial date;

IT IS HEREBY ORDERED as follows:-

1. This matter is adjourned 10:00 a.m. on Wednesday, 2nd and Thursday, 3rd August, 2023, for trial;
2. Both parties file their **List of Documents** and **Bundle of Documents**, if any, with the Tribunal, at least 14 days before the first trial date (by 3:00 p.m. on Wednesday, 19th July, 2023) and, at the same time, e-mail a copy thereof to the other party; and
3. Both parties file their **Written Representations**, if any, with the Tribunal, at least 7 days before the first trial date (by 3:00 p.m. on Wednesday, 26th July, 2023) and, at the same time, e-mail a copy thereof to the other party; and
4. The Tribunal serve this **Order On Directions** and a **Form J** (Notice of Hearing) on the parties' Representatives.

DATED: This 26th day of June, A.D., 2023.

Helen J. Almoraes-Jones

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