

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)

SAMMY DAVIS

APPLICANT

PLAYTECH SYSTEMS LIMITED, T/A "Island Luck"

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Julian D. Russell
Labour Advocate
Freeport, Grand Bahama
The Bahamas

For the Respondent

Valentino Hamilton, Esquire
Sears & Co.
Nassau, New Providence,
The Bahamas

WHEREAS:

- 1) On the 10th March, 2023, **Sammy Davis** ("the Applicant") filed a **Report of a Trade Dispute** against **Island Luck Web shop Gambling Establishment** with The Department of Labour in Grand Bahama, The Bahamas, which stated, inter alia, that the issues relevant to the dispute were:-

Vacation Pay, Overtime pay, Wrongful Suspension, Unfair Dismissal, Holiday pay, Wrongful Dismissal, Notice pay, Severance pay (2 weeks for 4 years, 3 months), Failure to give notice or payment in lieu of notice, Breach of contract, Return of N.I.B. Contribution, Physical Injury Compensation and Reimbursement of monies spent for medical care;

- 2) By a **Certificate of Referral** dated the 10th May, 2023 (received on the 5th July, 2023), the Honourable Minister of Labour & Immigration referred the trade dispute between the Applicant and **Playtech Systems Limited, T/A "Island Luck"** ("the Respondent") to the Industrial Tribunal, Northern Region, ("the Tribunal");
- 3) The Tribunal served the **Applicant** with notice of the referral on the 11th July, 2023;
- 4) On the 14th July, 2023, the **Applicant** filed a **Form A** (Originating Application) which stated, inter alia, that the Grounds for his application were:

Unfair Dismissal, 34, 35, 36 of The Employment Act, Section 107 of The Industrial Relations Act; Remuneration, Section 29 & 48 of The Employment Act, Wrongful Dismissal, Breach of contract, Vacation pay, Wrongful Suspension, Physical Injury Compensation, Reimbursement for loan payments to Bank, proper Notice pay, proper procedural allowance (sic) to a fair hearing before being terminated, Section 34 and aiding and abetting of Criminal actions of their client towards the Applicant;

- 5) On the 18th July, 2023, the Tribunal served a copy of the **Form A** (Originating Application) together with a **Form C** (Notice of Originating Application) and a **Form D** (Notice of Appearance) on the **Respondent's place of business**;
- 6) The **Respondent** failed to file a **Form D** (Notice of Appearance) or **Form E** (Defence) within the time limited for so doing by **Rules 4** and **6** of **The Industrial Relations (Tribunal Procedure) Rules, 2010** ("The Rules");
- 7) On the 11th August, 2023, the Respondent filed:- a **Form L** (Notice of Application for Extension of Time) seeking an extension of time (30 days) to file the Form D and Form E; a **Form D** (Notice of Appearance); and a **Form E** (Defence);

- 8) On the 30th August, 2023, the Respondent filed a **Form P** (Notice of Change of Address), changing the name of its Representative and its address for service;
- 9) On the 1st September, 2023, the Applicant's Representative filed a **Form F** (Notice for Further and Better Particulars) requesting that the Respondent:-
- Furnish him with the following further and better particulars:-
Results of investigation, Employee Handbook, Video, Confidence Agreement, Grievance Procedure, Disciplinary Proc, Acknowledgement, Contract of service & evidence; and
 - Produce for inspection at the Tribunal, the following documents:-
N.I.B. information, Gaming Board approved (sic), security badge (document), contract of service, video, results of investigation & responsibility to terminate;
- 10)The **Tribunal** today conducted a **Case Management** hearing in this matter;
- 11)The Tribunal acceded to the request of the **Applicant's Representative** to have *Ednal Rolle* (a Labour Advocate in *Obie Ferguson's Law Chambers* whom he said is assisting him) appear virtually at the hearings in this matter;
- 12)The Tribunal undertook to follow up on the status of the *Application to be a registered user of the Tribunal's E-filing portal* filed by the **Applicant Representative** and to add **the Respondent's Counsel** to this case to facilitate his access to the digital file and e-filing documents;
- 13)The Tribunal had the parties' **Representatives** exchange e-mail addresses for the purpose of communicating and serving each other with documents until the Applicant's Representative becomes a registered user of the E-filing portal;
- 14)The Tribunal requested that the **Respondent's Counsel** electronically re-file the **Form P** (Notice of Change of Address) in all Black font (no Blue);
- 15)The Tribunal today served:-
- the **Applicant's Representative** with the **Form L** (Notice of Application for Extension of Time) and **Form P** (Notice of Change of Address) filed by the Respondent; and
 - the **Respondent's Counsel** with the **Form F** (Notice for Further and Better Particulars) filed by the Applicant;

- 16)The **Tribunal** acceded to the Respondent's **Form L** (Notice of Application for Extension of Time) and validated the Respondent's late filing of the **Form D** (Notice of Appearance) and **Form E** (Defence);
- 17)The Respondent's **Form D** (Notice of Appearance) stated, inter alia, that it intended to resist the application and its name is **Playtech Systems Limited**;
- 18)The Respondent's **Form E** (Defence) stated, inter alia, that its name is **Playtech Systems Limited dba Island Luck** and it intends to resist the application on the grounds that:-

On Wednesday, 1st March, 2023, the Applicant and a Customer exchanged words regarding the Customer's ability to enter the Store;

The Customer asked the Applicant if he was crazy;

The Applicant told the Customer to wait until he was out of uniform, he will shoot him;

The Applicant attempted to take a photograph of the Customer;

The Customer attempted to knock the phone out of the Applicant's hand, but did not make contact with him;

The Applicant grabbed the Customer and punched him, which led to a physical fight between them;

The Applicant gave the Respondent a written Statement on the 2nd March, 2023;

The Respondent suspended the Applicant from the 4th March, 2023, pending investigation; and

The Surveillance footage showed that the Customer did not physically touch the Applicant until the Applicant grabbed him and punched him in the face.

- 19)**Both parties** agreed that 2 conciliation meetings were held at The Department of Labour and did not resolve any of the issues relevant to the dispute;
- 20)In answer to Applicant's **Form F** (Notice for Further and Better Particulars), the Tribunal directed that the **Respondent** serve the Tribunal and the Applicant's Representative with copies of the following items by Friday, 15th September, 2023:-

Employment contract, Disciplinary policy, Code of Conduct, Statement of Acknowledgment, Employee Handbook, verbal/written warnings issued to the Applicant within the last 12 months of his employment; the Yearly Performance Evaluations of the Applicant within the last 3 years of his employment; the Incident Report the Applicant signed, the Security Report and the video surveillance footage of the altercation between the Applicant and a customer on the 1st March, 2023;

- 21)The **Respondent's Director of Human Resources** (*Danica Pintard*) advised that the Applicant's employment with the Respondent commenced on the 22nd August, 2018, and not the 27th August, 2018;
- 22)The **Applicant's Representative** advised that the Applicant was withdrawing the following issues listed on The Report of a Trade Dispute Form:- *Return of N.I.B. Contribution; Vacation pay; Physical Injury Compensation; and Reimbursement of monies spent on medical care;*
- 23)Pursuant to **Section 58(1)(a)** of **The Industrial Relations Act, Cap. 321**, the Tribunal remitted the remaining issues: *Overtime (Public Holiday) pay, Wrongful Suspension, Wrongful Dismissal (Breach of contract, Failure to give notice or pay in lieu of notice, Severance pay for 4 years & 3 months)* and *Unfair Dismissal* to the parties for further consideration, with a view to settling/reducing it;
- 24)The Tribunal directed that the **Applicant's Representative** serve the Tribunal and the Respondent's Counsel with a list of the public holidays the Applicant claims he worked for the Respondent and was not paid at double his rate of pay, by Friday, 15th September, 2023;
- 25)The Tribunal requested that the **Respondent** verify whether the Applicant worked on the public holidays he alleged and was paid at double his rate of pay;
- 26)The **Applicant's Representative** advised that:-
- the Police charged the Applicant and the subject Customer with Illegal Fighting before The Magistrate's Court in Grand Bahama;
 - the Applicant is claiming **\$ 7,584.75** for **Wrongful Dismissal**; and
 - the Applicant is claiming **\$ 5,400.00** and **Unfair Dismissal**;
- 27)The Tribunal assessed the Applicant's entitlement if succeeds in his claim for:-
- **Wrongful Dismissal** under Section 29(2)(b)(i) & (ii) of **The Employment Act, Cap. 321A**, at \$ 2,997.00; and
 - **Unfair Dismissal** under **Section 46** (Basic award) at \$ 3,240.00;
- 28)The **Tribunal** recommended that the parties consider settling the Applicant's claims by the Respondent paying the Applicant compensation for Wrongful Dismissal and the Applicant withdrawing his claim against the Respondent for Unfair Dismissal or the Respondent reinstating the Applicant and compensating him for the period of his dismissal;

- 29)The **Applicant's Representative** advised that if the matter is not settled the Applicant will testify and call 4 witnesses on his behalf;
- 30)The **Respondent's Counsel** advised that the Respondent may call about 4 witnesses in its defence;
- 31)The **Tribunal** estimated that the trial may last 3 days;
- 32)**Both parties** elected to:- file **Witness Statements** (by the same date) to serve as the witnesses' evidence-in-chief; have cross-examination and re-examination of the witnesses be taken *viva voce*; and file an agreed List of Documents and Bundle of Documents;
- 33)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 **Respondent's Counsel** electronically re-file the **Form P** (Notice of Change of Address) in Black font;
2. The **Respondent's Counsel** serve the Tribunal and the Applicant's Representative with the following items by Friday, 15th September, 2023:-

Employment contract, Disciplinary policy, Code of Conduct, Statement of Acknowledgment, Employee Handbook, verbal/written warnings issued to the Applicant within the last 12 months of his employment; the Yearly Performance Evaluations of the Applicant within the last 3 years of his employment; the Incident Report the Applicant signed, the Security Report and the video surveillance footage of the altercation between the Applicant and a customer on the 1st March, 2023;
3. The **Applicant Representative** serve the Tribunal and the Respondent's Counsel with a list of the public holidays the Applicant claims he worked for the Respondent and was not paid at double his rate of pay, by Friday, 15th September, 2023;
4. The **Respondent** verify whether the Applicant worked on the public holidays he alleged and was paid at double his rate of pay;
5. The trial be done at **10:00 a.m.** on **Monday, 13th, Tuesday, 14th and Wednesday, 15th November, 2023;**

6. Each party file their **Witness Statements** and agreed **List of Documents** and **Bundle of Documents** with the Tribunal by **3:00 p.m.** on **Friday, 27th October, 2023**, and at the same time serve a copy thereof on the other party; and
7. Each party file any **Brief/Skeleton Arguments** or **Written Representations** with the Tribunal by **3:00 p.m.** on **Monday, 6th November, 2023**, and at the same time serve a copy thereof on the other party.

DATED: This 11th day of September, A.D., 2023.

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