

**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)**

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**CALISHA N. GRANT**

**APPLICANT**

**JAROL INVESTMENTS LTD.**

**RESPONDENT**

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**ORDER ON DIRECTIONS**

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**APPEARANCES**

For the Applicant

Ms. Pleasant M. M. Bridgewater  
Bridgewater & Co.  
Freeport, Grand Bahama  
The Bahamas

For the Respondent

Ms. Roquel Edgecombe  
Human Resources Manager,  
Freeport, Grand Bahama  
The Bahamas

**WHEREAS:**

- 1) On the 10<sup>th</sup> December, 2021, **Calisha N. Grant** ("the Applicant") filed a **Report of a Trade Dispute** against **Chances** with The Department of Labour in Grand Bahama, The Bahamas, which stated, inter alia, that:-

(5) Issues relevant to the dispute: *The Employee refused to take the vaccine and the Employer is making her pay for the Antigen test; and*

(6) Action taken for dealing with the Dispute under existing agreement: *Wrongful and Unfair Dismissal;*

- 2) By a **Certificate of Referral** dated the 11<sup>th</sup> April, 2023 (received on the 3<sup>rd</sup> August, 2023), the Honourable Minister of Labour & Immigration ("The Minister") referred the trade dispute between the Applicant and **Jarol Investments Ltd.** ("the Respondent") 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 3<sup>rd</sup> August, 2023, the Tribunal served the **Applicant** with notice of the referral;
- 4) On the 4<sup>th</sup> August, 2023, the Applicant filed a **Form A** (Originating Application), which stated, inter alia:-

11. Grounds for her application: *The Applicant was wrongfully dismissed without a verbal warning or any write-ups on file; she was dismissed without being compensated; and no rule was broken according to the Employee Rule Book or Labour law; and*

12. Reason for her dismissal, in her opinion: *Because she failed to produce a COVID Antigen test at her expense;*

- 5) In accordance with **Rule 4 of The Rules**, on the 9<sup>th</sup> August, 2023, the Tribunal served a copy of the **Form A** (Originating Application), a **Form C** (Notice of Originating Application) and a blank a **Form D** (Notice of Appearance) on the Respondent (received by *Erin Delancy*);
- 6) In accordance with **Rule 5(1) of The Rules**, on the 10<sup>th</sup> August, 2023, the **Respondent** filed a **Form D** (Notice of Appearance) which did not indicate whether or not it intended to resist the application and stated, inter alia, that:-
- its name is *Jarol Investments Limited*; and
  - its Representative is *Shurland & Co.*;

- 7) In accordance with **Rule 6 of The Rules**, on the 12<sup>th</sup> September, 2023, the Respondent filed a **Form E** (Defence) which stated, inter alia, that:-
- the Applicant was dismissed;
  - the reason for the dismissal was *Gross Misconduct* and *Breach of Company policies and procedures*;
  - the Applicant was repeatedly absent from work and did not communicate her non-attendance with her Supervisor manually or electronically;
  - she had no valid reasons for her absence;
  - the COVID-19 Pandemic required that emergency protocols be put in place to ensure the safety and well-being of all employees;
  - the Government mandated vaccination, social distancing and mask-wearing, which the Respondent adopted and memorialized on the Government website;
  - the Applicant was required to submit a Rapid Antigen test weekly;
  - she refused all protocols;
  - multiple discussions were held with her; and
  - because of her non-efforts, an amicable resolution was reached, which resulted in the Respondent terminating her for *Gross Misconduct* and *Breach of the Company's emergency protocol*;
- 8) On the 30<sup>th</sup> August, 2021, the **Tribunal** served both parties with a **Form J** (Notice of Hearing) setting this matter down for **Case Management** at 10:00 a.m. on Wednesday, 13<sup>th</sup> September, 2023;
- 9) At the request of the **Respondent's Counsel**, by letter dated 12<sup>th</sup> September, 2023, the Tribunal re-listed the Case Management hearing for 10:00 a.m. today, Tuesday, 3<sup>rd</sup> October, 2023;
- 10)The **Tribunal** declined the Respondent Counsel's request for a further adjournment of the Case Management hearing (made by letter dated 29<sup>th</sup> September, 2023) because he "*will be out of the jurisdiction*", to which the Applicant's Counsel had objected (by letter dated 2<sup>nd</sup> October, 2023);
- 11)The Tribunal today conducted a **Case Management hearing** in this matter in the absence of the Respondent's Counsel and in the presence of his Assistant and the Respondent's Human Resources Manager;
- 12)**Both parties** agreed that:- their working relationship was governed by a written contract of employment and Employee Handbook; and the Respondent terminated the Applicant on the 16<sup>th</sup> December, 2021 and not on the 8<sup>th</sup> December, 2021 (the date of the termination letter and the date of termination stated in the Applicant's **Form A** (Originating Application));

13)The Tribunal identified the **issues for trial** as:-

- Whether or not the Respondent could unilaterally vary the employment contract to require the Applicant to take a Rapid Antigen test?;
- Whether or not the Applicant's alleged failure to comply with the Respondent's COVID-19 protocols/policies could amount to a fundamental breach of the employment contract as the Respondent's Employee Handbook expressly stated that the policies set forth in it "*are not intended to create a contract*" and are not "*to be construed to constitute contractual obligations of any kind or a contract of employment*" between the Respondent and any of its employees?;
- Whether or not the Respondent wrongfully dismissed the Applicant?; and
- Whether or not the Respondent unfairly dismissed the Applicant?;

14)The Tribunal directed that the **Respondent** e-mail the Tribunal and the Applicant's Counsel copies of the *Employment Agreement* and *Termination letter*;

15)The Tribunal directed that the **Respondent** provide the Tribunal with a copy of its *Employee Handbook*;

16)Pursuant to **Section 58(1)(a)** of **The Industrial Relations Act, Cap. 321** ("The I.R.A."), the **Tribunal** remitted the dispute to the parties for further consideration, with a view to settling it out of Court;

17)The **Applicant's Counsel** advised that if the matter proceeds to trial, the Applicant will testify on her own behalf;

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

19)The **Tribunal** directed that the parties file:-

- **Witness Statements** at least 2 weeks before the trial, which will stand as the evidence-in-chief of the parties' witnesses;
- Any **List of Documents** and **Bundle of Documents** at least 2 weeks before the trial; and
- Any **Brief/Skeleton Arguments** no later than 7 days prior to the commencement of the trial, in accordance with **Rule 3(5)** of **The Rules**;

**IT IS HEREBY ORDERED THAT:-**

1. This **matter** is adjourned to 10:00 a.m. on Monday, 4<sup>th</sup> and Tuesday, 4<sup>th</sup> December, 2023, for trial;

2. The **Respondent** e-mail the Tribunal and the Applicant's Counsel copies of the *Employment Agreement* and *Termination letter*;
3. The **Respondent** provide the Tribunal with a copy of its *Employee Handbook*;
4. By Monday, 20<sup>th</sup> November, 2023, the **parties** file and at the same time serve a copy thereof on the other party's Representative:-
  - **Witness Statements** for their witnesses; and
  - Any **List of Documents** and **Bundle of Documents**;
5. By Monday, 27<sup>h</sup> November, 2023, the **parties** file, and at the same time serve a copy thereof on the other party's Representative, any **Brief** or **Skeleton Arguments**; and
6. The Tribunal serve a new **Form J** (Notice of Hearing) on both parties.

**AND THIS IS THE ORDER OF THE TRIBUNAL.**

**DATED: This 3<sup>rd</sup> day of October, A.D., 2023.**

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