

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)

SHAMIKA BARRY

APPLICANT

TOTAL EDUCATIONAL CENTER CO. LTD.

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Pro se
Freeport, Grand Bahama
The Bahamas

For the Respondent

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

WHEREAS:

- 1) On the 1st May, 2023, **Shemika Barry** ("the Applicant") filed a **Report of a Trade Dispute** against **Total Educational Center Co. Ltd.** with The Department of Labour in Grand Bahama, The Bahamas, which stated, inter alia, that the issues relevant to the dispute were *Unfair Dismissal, Wrongful Dismissal, Severance pay, Vacation pay, Notice pay and National Insurance Contribution;*
- 2) By a **Certificate of Referral** dated the 6th June, 2023 (received on the 5th July, 2023), the Honourable Minister of Labour & Immigration ("The Minister") referred the trade dispute between the Applicant and **Total Education Center Co. 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 7th July, 2023, the Tribunal served the **Applicant** with notice of the referral;
- 4) The Applicant filed a **Form A** (Originating Application) on the 11th July, 2023, which stated, inter alia, that:-

- the grounds for the application were that:-

In January 2023, she was given a favourable evaluation;

On the 17th March, 2023, she was called in by 2 Supervisors who gave the reason as in reference to an anonymous accusation that she was seen putting funds in her pocket 3 days prior, which were her tips;

Human Resources was not present at the meeting;

No proof was presented of her alleged wrongdoing;

She was suspended for 1 week pending an investigation;

She was then removed from the Schedule altogether;

She complied with Human Resources by giving statements to the General Manager (Ms. Clarke) and Security, but she was not given any feedback about the findings of the investigation or her employment;

After contacting the Respondent, Human Resources and The Grand Lucayan Hotel on a number of occasions, 9 weeks later, on the 4th May, 2023, the Respondent gave her a termination letter;

She was wrongfully terminated without any prior warnings, and

She was seeking Compensation for the remainder of her contract (7 weeks), Notice pay, Vacation pay and Compensation for Wrongful Dismissal; and

- the reason for her dismissal (in her opinion) was *she felt that she had been victimized because no Supervisor gave her any verbal or written warnings or negative comments about her work performance prior to her suspension;*

- 5) In accordance with **Rule 4 of The Rules**, on the 11th July, 2023, the Tribunal served a copy of the **Form A** (Originating Application), a **Form C** (Notice of Originating Application) and a blank **Form D** (Notice of Appearance) on the Respondent (received by *Ashnae Pennerman*);
- 6) In accordance with **Rule 5(1)**, on the 13th July, 2023, the **Respondent** filed a **Form D** (Notice of Appearance) which stated, inter alia, that:-
 - it intended to resist the application; and
 - the name of the Respondent is *Total Education Center Co. Ltd.*;
- 7) In accordance with **Rule 6 of The Rules**, on the 28th July, 2023, the Respondent filed a **Form E** (Defence) which stated, inter alia, that:-
 - *The name of the Respondent is Total Education Center Co. Ltd.;*
 - *The Applicant was dismissed;*
 - *The reason for the Applicant's dismissal was Gross Insubordination; and*
 - *The Respondent intended to resist the application on the grounds that the Applicant was terminated for cause after showing disrespect to the authorities, calling them clowns, using offensive language and very aggressive behaviour towards supervisors etc.;*
- 8) On the 28th July, 2023, the Tribunal issued a **Form J** (Notice of Hearing) setting this matter down for **Case Management** at 10:00 a.m. on Thursday, 22nd August, 2023;
- 9) Only the Applicant appeared at the **Case Management** held at 10:00 a.m. on Thursday, 22nd August, 2023;
- 10) The Tribunal was satisfied that the Respondent was served with the **Form J** (Notice of Hearing) at least 14 days before the date of the hearing (on the 1st August, 2023, and adjourned the matter to 10:00 a.m. on Thursday, 28th September, 2023, for trial;
- 11) On the 28th August, 2023, the Applicant filed a **Form P** (Notice of Change of Address) pursuant to **Rule 18(4) of The Rules**;
- 12) Only the **Applicant** and the **Respondent's Counsel** appeared on the trial date today (10:00 a.m. on Thursday, 28th September, 2023);
- 13) The **Respondent's Counsel** advised that the Respondent's Labour Co-Ordinator (*Agnes Roker*) was unable to appear before the Tribunal today on account of illness;

14) Pursuant to **Section 59(1)(b)(ii)** of **The Industrial Relations Act, Cap. 321** ("**The I.R.A.**") and **Rule 16(1) & (2)** of **The Rules**, and with the consent of both parties, the Tribunal, of its own motion, joined **Total Educational Center Co. Ltd.** as the Respondent and dismissed **Total Education Center Co. Ltd.** from the proceedings;

15) **Both parties** agreed that the working relationship was governed by a series of written contracts;

16) The **Applicant** advised that:-

- the Respondent did not provide her with copies of the 3 or 4 contracts she signed for the duration of her employment;
- the Respondent had her sign 3 to 4 written contracts for 3 months duration with a 1 week break in service in between;
- her last contract was supposed to expire on the 1st May, 2023;
- at the time of her termination, her rate of pay was \$ 6.98 per hour and her standard weekly hours of work was 40 hours; and
- the Respondent deducted National Insurance Board ("N.I.B.") contributions from her base pay and gratuities, but never paid it to The N.I.B. on her behalf;

17) The **Respondent's Counsel** advised that:-

- the Respondent's defence to the Applicant's claim for *Vacation pay* is that it had engaged the Applicant under a "*service contract*" so she was not their "*employee*" but an "*independent contractor*"; and
- the Respondent's defence to the Applicant's claim for *Wrongful Dismissal* and *Unfair Dismissal* is that it had just cause to summarily dismiss the Applicant;

18) The **Respondent's Counsel** undertook to:-

- e-mail the Applicant's employment contracts to the Applicant and Tribunal;
- ascertain if the Respondent had deducted N.I.B. contributions from the Applicant's base pay and gratuities;
- ascertain if the Respondent paid any N.I.B. contributions to the N.I.B. for the Applicant after the N.I.B. had issued her N.I.B Contribution History Detail Report on the 24th April, 2023;
- provide the Tribunal and the Applicant with copies of all the Applicant's Pay Statements showing the amount of money the Respondent had deducted from her pay for N.I.B. contributions (if any); and
- provide the Tribunal and the Applicant with proof that the Respondent paid all outstanding N.I.B. contributions (if any) or made an agreement with The N.I.B. to do so;

- 19)The **Tribunal** undertook to e-mail the Applicant's **N.I.B Contribution History Detail Report** dated the 24th April, 2023, to the Respondent's Counsel (as several pages were missing from the copy the Applicant gave the Respondent's Counsel);
- 20)The Tribunal advised the Respondent's Counsel that **Section 15(a) of The Industrial Relations (Amendment) Act, 2017, No. 6 of 2017**, amended **Section 58 of The I.R.A.** by inserting:- 58. (1) The Tribunal may in relation to any matter before it — "*(e) levy fines in accordance with the provisions of this Act and the Employment Act, Ch. 321A*";
- 21)The Tribunal identified the **issues for trial** as:-
- Whether or not the Respondent deducted N.I.B. contributions from the Applicant's base pay and gratuities and failed to pay it to the N.I.B.?
 - Whether the Applicant worked for the Respondent under a contract of employment or service contract?;
 - Did the series of contract the parties sign amount to an entire contract?;
 - If the Tribunal finds that the Applicant was an employee of the Respondent, how much Vacation pay the Respondent owes her?; and
 - Did the Respondent wrongfully and/or unfairly dismissed her?;
- 22)Pursuant to **Section 58(1)(a) of The I.R.A.**, the **Tribunal** remitted the dispute to the parties for further consideration, with a view to settling it out of Court;
- 23)The **Applicant** advised that if the matter is not settled, she alone will testify on her behalf;
- 24)The **Tribunal** elected to have the witnesses give *viva voce* testimony at the trial;
- 25)The **Tribunal** estimated that the trial may last 1 day; and
- 26)**Rule 3(5) of The Rules** provides that a Counsel/Representative appearing pursuant to **Section 57(3) of The I.R.A.** may submit a *Brief/Skeleton Arguments* to the Tribunal and serve a copy on the other party no later than 7 days prior to the commencement of the hearing;

IT IS HEREBY ORDERED THAT:-

1. The matter is adjourned to 10:00 a.m. on Monday, 23rd October, 2023, for trial;
2. The parties file any **Brief** or **Skeleton Arguments** by Monday, 16th October, 2023, and at the same time serve a copy thereof on the other party;

3. The **Tribunal** e-mail the Applicant's **N.I.B Contribution History Detail Report** dated the 24th April, 2023, to the Respondent's Counsel;
4. The **Respondent's Counsel**:-
 - e-mail copies of the Applicant's written employment contracts to the Applicant and the Tribunal Clerk;
 - inform the Applicant and the Tribunal, in writing, whether the Respondent acknowledges deducting N.I.B. contributions from the Applicant's base pay and gratuities;
 - provide the Applicant and the Tribunal with copies of all the Applicant's Pay Statements showing the amount of money the Respondent had deducted from her pay for N.I.B. contributions (if any); and
 - provide the Applicant and the Tribunal with proof that the Respondent paid all outstanding N.I.B. contributions (if any) or made an agreement with The N.I.B. to do so; and
5. The Tribunal serves this **Order On Directions** and a new **Form J** (Notice of Hearing) on both parties.

AND THIS IS THE ORDER OF THE TRIBUNAL.

DATED: This 28th day of September, A.D., 2023.

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