

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)

SHARISE TATE FERGUSON

APPLICANT

AMSPEC INTERNATIONAL LIMITED

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Mr. Elkenny Lockhart
Labour Advocate
Freeport, Grand Bahama
The Bahamas

For the Respondent

Counsel, Ms. Lavette A. Kemp
Graham Thompson
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 27th March, 2023, **Sharise Tate Ferguson** ("the Applicant") filed a **Report of a Trade Dispute** against **Ampsec International Ltd.** ("the Respondent") with The Department of Labour in Grand Bahama, The Bahamas;
- 2) It stated, inter alia, that the issues relevant to the dispute were *Wages owed for Supervisor's position, Constructive Wrongful Dismissal (Notice pay, Severance pay)* and *Constructive Unfair Dismissal*;
- 3) By a **Certificate of Referral** dated the 8th May, 2023 (received on the 5th July, 2023), the Honourable Minister of Labour & Immigration ("The Minister") referred the said trade dispute to the Industrial Tribunal, Northern Region, ("the Tribunal");
- 4) In accordance with **Rule 3(1) of The Industrial Relations (Tribunal Procedure) Rules, 2010** ("The Rules), on the 6th February, 2023, the Tribunal served the **Applicant** with notice of the referral and the Applicant filed a **Form A** (Originating Application) on the 11th July, 2023;
- 5) It stated, inter alia, that the grounds for the application were *Unpaid wages, Wrongful Dismissal* and *Constructive Dismissal*;
- 6) In accordance with **Rule 4 of The Rules**, on the 11th July, 2023, the Tribunal served a copy of the **Form A** (Originating Application) and a **Form C** (Notice of Originating Application) on the Respondent (received by *Timayne Johnson*);
- 7) In accordance with **Rule 5(1) of The Rules**, 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; its name is *Amspec International*; and its Representative is *Selina Hall-Glinton, HR & Accounts Manager*;
- 8) The Respondent failed to file a **Form E** (Defence) within the time limited for so doing by **Rule 6 of The Rules**;
- 9) In accordance with **Rule 18(4) of The Rules**, on the 20th July, 2023, the **Respondent** filed a **Form P** (Notice of Change of Address) which changed the name of its Representative to *Graham Thompson* and its address for service;
- 10) In accordance with **Rule 18(4) of The Rules**, on the 28th July, 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);

- 11) On the 3rd August, 2023, the **Respondent** filed a **Form E** (Defence), which did not state the name of the Respondent or the exact date the Applicant's employment commenced in May 2020;
- 12) The Tribunal today (Wednesday, 20th September, 2023) conducted a **Case Management hearing** in this matter;
- 13) With the consent of the Applicant's Representative, the Tribunal acceded to the **Respondent's Form L** (Notice of Application for Extension of Time) and granted the Respondent an extension of time to file a **Form E** (Defence);
- 14) Pursuant to **Rule 12(1)(d) of The Rules**, and with the consent of the Applicant's Representative, the Tribunal granted the **Respondent** leave to file an amended **Form E** (Defence) stating the name of the Respondent and the exact date the Applicant commenced employment with the Respondent within 7 days from today;
- 15) **Both parties** agreed that the working relationship was not governed by a written employment contract or Employee Handbook;
- 16) The **Respondent's Counsel** undertook to confirm in writing to the Tribunal and the Applicant's Representative if the Applicant was bound by the *Job Description* she produced to the Tribunal;
- 17) The **Applicant's Representative** advised that although The Report of a Trade Dispute listed *Wages owed for Supervisor's position* as an issue relevant to the dispute, the Applicant was no longer claiming that she held a supervisory position;
- 18) The **Applicant's Representative** advised that the Respondent promoted the Applicant from the position of *Laboratory Technician* (\$ 15 per hour rate of pay) to *Laboratory Lead Shift Technician*, but denied her the rate of pay of \$ 18 per hour that was given to other employees in the same position;
- 19) The **Respondent's Human Resources/Accounts Manager** advised that:-
 - around February 2022, the Applicant resigned from the position of *Laboratory Technician*, for which she earned \$ 15 per hour;
 - in April 2022, the Respondent re-engaged the Applicant under a new employment contract in the position of *Laboratory Lead Shift Technician*, at the same rate of pay (\$ 15 per hour); and
 - Between April and October 2022, not all of the Respondent's other *Laboratory Lead Shift Technicians* were paid at the rate of \$ 18 per hour, but according to their experience and tenure;

- 20)The Tribunal directed that the **Applicant's Representative** provide Tribunal and the Respondent's Counsel with further written particulars of the Applicant's claim for **Constructive Unfair Dismissal** by Friday, 20th October, 2023;
- 21)The **Applicant's Representative** produced written particulars of the Applicant's claims, seeking \$ **9,840.00** in compensation (excluding *Unfair Dismissal*) representing:-
- **Back pay** (\$ 3,360.00); and
 - **Wrongful Dismissal** (\$ 6,480.00, comprising \$ 2,880.00 for Notice pay and \$ 3,600.00 for Severance pay);
- 22)Pursuant to **Section 58(1)(a)** of **The Industrial Relations Act, Cap. 321**, the **Tribunal** remitted the dispute to the parties for further consideration, with a view to settling it out of Court;
- 23)The **Applicant's Representative** advised that if the matter proceeds to trial, the Applicant will testify and call about 3 witnesses on her behalf;
- 24)The **Respondent's Counsel** advised that the Respondent may call about 3 or 4 witnesses in its defence;
- 25)The **Applicant's Representative** elected to have the Applicant's witnesses give *viva voce* testimony at the trial;
- 26)The **Respondent's Counsel** elected to have the Respondents witnesses tender written Witness Statements into evidence to serve as their evidence-in-chief;
- 27)The **Tribunal** estimated that the trial may last 2 days;
- 28)The **Tribunal** directed that:-
- The parties file an **Agreed List** and **Bundle of Documents** (including all e-mails exchanged between the parties from the 19th October to the 7th December, 2022) by Friday, 20th October, 2023; and
 - Each party file a separate **List** and **Bundle of Documents** for any other documents they wish to tender into evidence; and
- 29)The **Tribunal** advised the parties that **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 **Respondent** file an amended **Form E** (Defence) stating the name of the Respondent and the exact date the Applicant commenced employment with the Respondent within 7 days from today;
2. The **Respondent's Counsel** confirm in writing to the Tribunal and the Applicant's Representative if the Applicant was bound by the Job Description she produced;
3. The **Applicant's Representative** provide the Tribunal and the Respondent's Counsel with written particulars of the Applicant's claim for ***Constructive Unfair Dismissal*** by Friday, 20th October, 2023;
4. By Friday, 20th October, 2023, the parties file:-
 - An **Agreed List** and **Bundle of Documents**;
 - A separate **List** and **Bundle of Documents** for any other documents they wish to tender into evidence; and
 - A **Brief** or **Skeleton Arguments** (if any);and at the same time serve a copy thereof on the other party's Representative;
5. The matter is adjourned to 10:00 a.m. on Tuesday, 31st October, 2023, and Wednesday, 1st November, 2023, for trial; and
6. The Tribunal serves a new **Form J** (Notice of Hearing) on both parties.

AND THIS IS THE ORDER OF THE TRIBUNAL.

DATED: This 20th day of September, A.D., 2023.

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