

**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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**FREDRICK ROLLE**

**APPLICANT**

**LUCAYAN MARITIME SERVICES LTD.**

**RESPONDENT**

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**ORDER ON DIRECTIONS**

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**APPEARANCES**

For the Applicant

Pro se  
Freeport, Grand Bahama  
The Bahamas

For the Respondent

Kevin M. Russell, Esquire  
Kevin M. Russell & Co.  
Chambers  
Freeport, Grand Bahama  
The Bahamas

**WHEREAS:**

- 1) On the 5<sup>th</sup> December, 2023, **Fredrick Rolle** ("the Applicant") filed a **Report of a Trade Dispute** against **Lucayan Maritime Services Ltd.** ("the Respondent") with The Department of Labour in Grand Bahama, The Bahamas, which stated, inter alia, that the issues relevant to the dispute were *Severance pay, Wrongful Dismissal, Unfair Dismissal, Notice pay, Wages owed and Wages for improper salary paid*;
- 2) By a **Certificate of Referral** dated the 31<sup>st</sup> January, 2024 (received on the 22<sup>nd</sup> February, 2024), the Honourable Minister of Labour & The Public Service referred the said trade dispute 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 22<sup>nd</sup> February, 2024, the Tribunal served the **Applicant** with notice of the referral;
- 4) On the 26<sup>th</sup> February, 2024, the Applicant filed a **Form A** (Originating Application), which stated, inter alia, that the grounds for his application is that the Respondent:- breached his employment contract by lowering his monthly pay; failed to calculate his hourly rate of pay accurately, resulting in his Overtime pay being incorrect; did not recognize that his position as a Boat Captain was a supervisory one; and did not give him 1 month's notice;
- 5) On the 27<sup>th</sup> February, 2024, 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 *Geno Daniels*);
- 6) On the 1<sup>st</sup> March, 2024, the **Respondent** filed a **Form D** (Notice of Appearance) which stated, inter alia, that it intended to resist the application;
- 7) On the 14<sup>th</sup> March, 2024, the **Respondent** filed a **Form E** (Defence), which stated, inter alia, that:- in August 2023, the Respondent gave the Applicant a Memorandum outlining the change in the Respondent's contract with its client and the changes to shift schedules and pay; the Respondent informed all its employees that from mid-August 2023, their services with the client will be suspended; the Respondent was forced to reduce work hours to ensure that each employee received a bi-weekly salary, even though revenue decreased drastically; in October 2023, the Respondent gave the Applicant a formal termination letter together with a reference letter; and the Applicant refused to accept the termination letter, arguing that his pay should be that of a Supervisor, which he was not;
- 8) The **Tribunal** today conducted a **Case Management** hearing in this matter;

9) The **Respondent's Counsel** produced a copy of the Respondent's **Certificate of Good Standing**;

10)The Tribunal directed that the **Respondent's Counsel** produce a copy of the Respondent's **Certificate of Incorporation** in order to confirm if its name was *Lucayan Maritime Services Ltd.* (as stated in the **Form A**, Originating Application) or *Lucayan Maritime Services Limited* (as stated in the **Form D**, Notice of Appearance and **Form E**, Defence);

11)The **Applicant** produced 2 employment contracts/letters between him and the Respondent: one dated the 19<sup>th</sup> September, 2018 and the other dated the 8<sup>th</sup> October, 2019 (copy given to the Respondent's Counsel);

12)**Both parties** agreed that the working relationship was also governed by an **Employee Handbook**, a copy of which the Respondent's Counsel undertook to provide to the Tribunal and the Applicant;

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

- His claim for "*Wages owed*" is for the remainder of his salary from August to November 2023 during which period the Respondent had unilaterally reduced his pay, which he assessed at **\$ 3,185.86**; and
- His claim for "*Wages owed for improper salary paid*" is for the remainder of his salary for the duration of his employment as the Respondent had used the incorrect hourly rate of pay to calculate his *Overtime pay* (divided his monthly pay of \$ 2,600 by 30 days instead of by the number of days he had actually worked that month);

14)The Tribunal advised the **Applicant** that:-

- A claim for **Wrongful Dismissal** encompasses a claim for **Notice pay** and **Severance pay**;
- Neither employment contract addressed the issue of **Overtime pay**, so the minimum standard for Overtime pay set out in **The Employment Act** ("the Act") applies;
- **Section 8(4)** of the Act provides that the Section does not apply to persons holding a supervisory or managerial position;
- Therefore, he could not seek compensation for **Wrongful Dismissal** as a Supervisor and also maintain a claim for incorrectly assessed **Overtime pay** when he served the Respondent as a *Boat Captain*;

- 15) The Applicant said he thought that **Section 8(4)** of the Act only applied to **Section 8** and not to **Sections 9 & 10** of the Act, which deal with Overtime pay;
- 16) The **Tribunal** undertook to e-mail the parties a Bahamas Court of Appeal decision which held that by virtue of **Sections 8 & 10** of the Act, an employee must not hold "*a supervisory or managerial position*" within the organization in order to qualify for *Overtime pay*. SCCivApp. No. 177 of 2017, **Anthony Rahming v. Grand Bahama Power Company Ltd.**;
- 17) The **Respondent's Counsel** advised that the Respondent denies that the Applicant's position of *Boat Captain* was a supervisory one even if the *Deck Hand* and persons on the boat were subject to his direction/control;
- 18) The **Tribunal** undertook to send the parties The Bahamas Court of Appeal decision that is the prevailing legal authority on the definition of the words, "*supervisory or managerial position*": IndTribApp. No. 86 of 2021, **Commonwealth Brewery Ltd. v. Patrice Ferguson**;
- 19) The Tribunal directed that the **Applicant** provide to the Tribunal and the Respondent's Counsel, further and better written particulars of his claim for *Unfair Dismissal* within 21 days from today;
- 20) The **Applicant** agreed to withdraw his claim for *Unfair Dismissal* (basic award under **Section 46** of the Act assessed by the Tribunal at **\$ 9,000.00**) if the Respondent agreed to pay him compensation for *Wrongful Dismissal* (Notice pay & Severance pay) under **Section 29(2)(c)(i) & (ii)** of the Act as a Supervisor (assessed by the Tribunal at **\$ 16,042.00**);
- 21) The Respondent's Counsel agreed to seek further instructions from the Respondent's President on the settlement proposal and on whether the Respondent will seek a credit for the money it mistakenly paid the Applicant for *Overtime pay* after he became a *Boat Captain*;
- 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** said he will testify and call about 2 witnesses on his behalf;
- 24) The **Respondent's Counsel** said he did not know how many witnesses the Respondent will call in its defence;
- 25) The **Tribunal** estimated that the trial may last 2 days;

- 26)The **Tribunal** elected to receive the Witnesses' testimonies *viva voce* because the Applicant is an unrepresented lay person;
- 27)Both parties agreed to file their **List of Documents** and **Bundle of Documents** with the Tribunal and serve it on the opposing side at least 14 days before the trial date; and
- 28)The **Rules** provide that at least 7 days prior to the commencement of the hearing, a Counsel may submit a **Brief/Skeleton Arguments** to the Tribunal [**Rule 3(5)**] and an unrepresented party may submit **Written Representations** to the Tribunal [**Rule 3(6)**];

**IT IS HEREBY ORDERED THAT:-**

1. The matter is adjourned **10:00 a.m.** on **Wednesday, 26<sup>th</sup> & Thursday, 27<sup>th</sup> June, 2024**, for trial;
2. The **Respondent's Counsel** provide the Tribunal and the Applicant with copies of the Respondent's **Certificate of Incorporation** and **Employee Handbook**;
3. The **Applicant** provide the Tribunal and the Respondent's Counsel with further and better written particulars of his claim for *Unfair Dismissal* within 21 days from today (by **Monday, 27<sup>th</sup> May, 2024**);
4. **Both parties** file their **List of Documents** and **Bundle of Documents** (if any) with the Tribunal at least 14 days before the commencement of the trial (by **Wednesday, 12<sup>th</sup> June, 2024**) and serve it on the opposite side; and
5. The Applicant file any **Written Representations** and the Respondent's Counsel file any **Brief/Skeleton Arguments** at least 7 days before the commencement of the trial (by **Wednesday, 19<sup>th</sup> June, 2024**) and serve it on the opposite side.

**DATED: This 6<sup>th</sup> day of May, A.D., 2024.**

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