

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)

RAPHAEL WHYLLY

APPLICANT

OCEAN REEF RESORT AND YACHT CLUB

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Michelle Outten
Labour Advocate
Freeport, Grand Bahama
The Bahamas

For the Respondent

W. Christopher Gouthro, Esquire
Gouthro & Co.
Chambers
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 20th July, 2023, **Raphael Whylly** ("the Applicant") filed a **Report of a Trade Dispute** against **Ocean Reef Resort And Yacht Club** ("the Respondent") at The Department of Labour ("DOL") in Grand Bahama, The Bahamas;
- 2) It stated, inter alia, that the issues relevant to the dispute were *Unfair Dismissal, Wrongful Dismissal, Redundancy pay in accordance with the law and What is fair and equitable*;
- 3) By a **Certificate of Referral** dated the 6th October, 2023 (received on the 22nd February, 2024), the Honourable Minister of Labour & The Public Service 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 22nd February, 2024, the Tribunal served the **Applicant** with notice of the referral;
- 5) The Applicant filed a **Form A** (Originating Application) on the 29th February, 2024, which stated, inter alia, that the grounds for the application was that *the Applicant was unfairly terminated based on low volume of business, yet the employer hired another person to do the same or similar duties*;
- 6) On the 1st March, 2024, the Tribunal served a copy of the **Form A** (Originating Application), a **Form C** (Notice of Originating Application) and a **Form D** (Notice of Appearance) on the Respondent (received by *Ashley Allen*);
- 7) The **Respondent** failed to file a **Form D** (Notice of Appearance) within the 7 days limited for so doing by **Rule 5(1)** of The Rules;
- 8) On the 12th March, 2024, the **Respondent** filed:-
 - a **Form D** (Notice of Appearance); and
 - a **Form L** (Notice of Application For Extension of Time) applying for an extension of time (7 days) but did not state to do what act;
- 9) The **Respondent** failed to file a **Form E** (Defence) within the 14 days limited for so doing by **Rule 6** of **The Rules**;
- 10) On the 25th March, 2024, the Respondent filed an application to dismiss the matter on the grounds that the parties had previously settled it, supported by **letter** dated the 22nd March, 2024 with **3 attachments**, namely, copies of:

- a **Form A**, Originating Application the Applicant filed against the Respondent on the 10th May, 2021 (Case No. IT/NR/NES/035/2021);
- a check dated the **13th October, 2021**, for **\$ 4,866.75**; and
- an **Order of Dismissal** made by the Tribunal in the said case on the 22nd October, 2021;

11)The **Tribunal** today conducted a **Case Management** hearing in this matter;

12)The Tribunal today served the Applicant's Representative with:-

- the **Form D** (Notice of Appearance) that the Respondent had filed with the Tribunal on the 12th March, 2024; and
- the **letter**, together with the 3 attachments, that the Respondent had filed with the Tribunal on the 25th March, 2024, applying to dismiss the matter;

13)The Tribunal took the position that it could not entertain any application challenging the validity of the Certificate of Referral on the grounds that the dismissal took place on the 6th July, 2020, but this trade dispute was filed over 3 years later (on the 20th July, 2023): **New Providence Building Supplies Ltd. v. Richard Lee Thompson**, No. 58 of 2000, **Corrine Higgins v. Kerzner/Island Hotel Company Ltd.** No. 294 of 2014 & **Island Hotel Co. Ltd. v. John Fox**, No. 54 of 2017, Bahamas Court of Appeal;

14)The Tribunal's records show that it had previously heard 3 **Form A**, Originating Applications that the Applicant had filed against the Respondent in respect of the same employment contract, namely:-

- a) Trade Dispute No. **55/2020**, filed on the **31st August, 2020**, alleging that his employment began in 1991, he was terminated on the 6th April, 2020, and claiming that *his Employer failed to pay proper Severance payment, holiday, vacation and lieu days, contrary to Labour laws*;

Assigned Case No. IT/NR/NES/035/2021, which the Tribunal dismissed on the 22nd October, 2021, after the Applicant filed a **Form K** (Notice of Withdrawal);

- b) Trade Dispute No. **55/2020**, filed on the **31st August, 2020**, alleging that his employment began in September 1991, he was terminated on the 6th July, 2020, and claiming that *contrary to Labour laws, his Employer failed to pay proper Severance payment, holiday, vacation and lieu days*;

Assigned Case No. IT/NR/NES/001/2022, which the Tribunal dismissed on the 18th February, 2022, on the grounds that the Minister had previously sent the same trade dispute to the Tribunal, which the Tribunal had dismissed after the Applicant filed a **Form K** (Notice of Withdrawal); and

- c) Trade Dispute No. **22/2022**, filed on the **4th March, 2020**, alleging that his employment began in December 1991, he was terminated on the 6th July, 2020, and claiming that *contrary to The Employment Act, his employer refused to pay him Unpaid Overtime pay, proper Minimum wage and unpaid Public Holiday;*

Assigned **Case No. IT/NR/NES/018/2022;**

The Applicant filed a **Form A**, Originating Application, on the 17th June, 2022;

The Respondent filed a **Form D**, Notice of Appearance, on the 28th June, 2022;

The Respondent filed a **Form E**, Defence, on the 14th July, 2022;

The Tribunal conducted a **Case Management hearing** at 10:00 a.m. on Thursday, 8th September, 2022;

The Tribunal identified the issues relevant to the trade dispute as, Whether or not the Respondent owes the Applicant:-

- **Overtime pay** for work he performed in excess of the standard hours of work and on public holidays (which does not apply to employees holding a supervisory or managerial position)? and
- **Back pay** for non-payment of the minimum wages in accordance with the provisions of **Section 4** of **THE MINIMUM WAGES ACT**, Cap. 321B and **Section 2** of **THE MINIMUM WAGES (INCREASE IN MINIMUM WAGES) ORDER**, 2015, S.I. No. 59 of 2015?;

The Tribunal served both parties with an **Order On Directions** directing that:-

1. The Applicant's Representative send the Respondent's Counsel a list of the documents on which he would be relying to facilitate the parties filing an agreed **List of Documents** and **Bundle of Documents** and a separate List of Documents and Bundle of Documents for the documents on which there is no agreement at least 14 days before the trial date (by Wednesday, 14th September, 2022);
2. The Applicant's Representative and Respondent's Counsel file with the Tribunal and mutually exchange their **Brief** or **Skeleton Arguments** (if any at least 7 days before the trial date (by Friday, 23rd September, 2022);

In accordance with **Rule 8(1)** of **The Rules**, the Tribunal served both parties with a **Form J** (Notice of Hearing) setting this matter down for trial at 10:00 a.m. on Monday, 5th and Tuesday, 6th December, 2022;

The Applicant and his Representative failed to appear before the Tribunal at 10:00 a.m. on Monday, 5th December, 2022;

The Respondent's Counsel and sole Witness, *Kors Dormans*, appeared; and The Tribunal ordered that the Applicant's **Form A** (Originating Application) be struck out for want of prosecution pursuant to **Rule 12(1)(f)** of **The Rules** and this matter be dismissed.

- 15) At the request of the **Applicant's Representative** and in accordance with **Rule 9 of The Rules**, the Tribunal, adjourned the matter to give the Applicant the opportunity to respond to the Respondent's application to dismiss the matter; and
- 16) The **Respondent's Counsel** also requested opportunity to submit legal authorities in support of his application to dismiss the matter;

IT IS HEREBY ORDERED THAT:-

1. The **Respondent's Counsel** file his Legal Submissions in support of his application to dismiss the matter within 21 days from today (by **3:00 p.m.** on **Tuesday, 28th May, 2024**) and serve it on the Applicant's Representative;
2. Within 21 days thereafter (by **3:00 p.m.** on **Tuesday, 18th June, 2024**), the **Applicant's Representative** file her Legal Submissions in response, while also answering why the Tribunal should not, of its own motion, dismiss the matter as an abuse of the Court process, and serve it on the Respondent's Counsel; and
3. The matter is adjourned to **10:00 a.m.** on **Friday, 21st June, 2024**, for Ruling.

DATED: This 7th day of May, A.D., 2024.

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