

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 (ACTING PRESIDENT)

(SITTING ALONE)

GERARD GARDNER

APPLICANT

BAHAMAS MARITIME SOLUTIONS LIMITED

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Pro se
Freeport, Grand Bahama
The Bahamas

For the Respondent

Jason Hanna
Respondent's President
Freeport, Grand Bahama
The Bahamas

WHEREAS:

- 1) On the 12th February, 2024, **Gerard Gardner** ("the Applicant") filed a **Report of a Trade Dispute Form** against **Bahamas Maritime Solutions Limited** ("the Respondent") with The Department of Labour in Grand Bahama, The Bahamas, which stated, inter alia, that the issues relevant to the dispute were *Employer refused to allow him to work, Constructive Wrongful & Unfair Dismissal, Wages owed, Vacation pay, payment for the oil spill cleaning project and Notice pay*;
- 2) By a **Certificate of Referral** dated the 8th April, 2024 (received on the 30th April, 2024), the Honourable Minister of Labour & The Public Service referred this 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 30th April, 2024, the Tribunal served the **Applicant** with notice of the referral;
- 4) The Applicant filed a **Form A** (Originating Application) on the 1st May, 2024, which stated that the grounds for his application was *Unjust termination with unpaid wages*;
- 5) On the 2nd May, 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 *Jason Hanna*);
- 6) On the 8th May, 2024, the **Respondent** filed a **Form D** (Notice of Appearance) which stated, inter alia, that it intended to resist the application;
- 7) On the 17th May, 2024, the **Respondent** filed a **Form E** (Defence), which stated, inter alia, that:- the Respondent did not dismiss the Applicant; he assumed that he was terminated; and the vessel was on dry dock from the 12th January until the 1st April, 2024;
- 8) Both the **Form D** (Notice of Appearance) and **Form E** (Defence) filed by the Respondent stated that that its name was *Bahamas Maritime Solutions Ltd.* but did not state the name of its Representative;
- 9) Pursuant to **Rule 15 of The Rules**, the Tribunal today conducted a **Case Management** hearing in this matter;
- 10) The Applicant and the Respondent's President appeared and the Acting President appeared virtually (via ZOOM) from the Tribunal in New Providence;

- 11)The Tribunal granted the **Respondent** leave to file an amended **Form D** (Notice of Appearance) naming the Respondent's President as its Representative by today;
- 12)The Tribunal directed that the **Respondent's Representative** produce a copy of the Respondent's **Certificate of Referral** as soon as practicable for the Court to ascertain if the Respondent's name was:-

Bahamas Maritime Solutions Limited, as stated in the **Report of a Trade Dispute Form** and the **Certificate of Referral**; or

Bahamas Maritime Solutions Ltd., as stated in the **Form D** (Notice of Appearance) and **Form E** (Defence);
- 13)The **Tribunal** advised the parties that it had no jurisdiction to hear the Applicant's claim for money that the Respondent allegedly owed him for work he performed for the Respondent pursuant to a collateral contract for service, which may be hard to enforce in a Court of law as its terms lacked certainty;
- 14)**Both parties** agreed that the Applicant's employment commenced when he renewed his Boat Captain licence on the 7th February, 2022 [the date stated in the Respondent's **Form E** (Defence)] and not on the 21st January, 2022 [the date stated in the Applicant's **Form A** (Originating Application)];
- 15)The **Tribunal** ascertained that an issue for trial was whether or not the Applicant's position of *Boat Captain* was a supervisory position;
- 16)The **Tribunal** directed that the parties show each other their records of the days the Applicant performed work for the Respondent during the pay period 5th to 19th January, 2024;
- 17)The **Tribunal** directed that the **Applicant** notify the Tribunal, in writing, if the parties settled his claim for **Wages**;
- 18)The **Respondent** agreed to pay the sum of **\$ 1,602.00** to the Applicant (by direct deposit to his Bank account) by on or before **Friday, 28th July, 2024**, in full settlement of the claim for Outstanding **Vacation pay**;
- 19)The Tribunal advised the **Applicant** that he bore the burden of proving, on a balance of probabilities, that he was constructively dismissed by the Respondent, which the Respondent has denied;

20)The **Tribunal** encouraged the parties to consider settling the Applicant's claims for **Constructive Wrongful** and **Constructive Unfair Dismissal**, by:-

- The Respondent paying the Applicant \$ 2,100 for Constructive Unfair Dismissal (basic award) and the Applicant withdrawing his claim for Constructive Wrongful Dismissal; or
- The Respondent paying the Applicant for Constructive Wrongful Dismissal:-
\$ 8,887.66 (assessed as a Supervisor) or
\$ 4,102.00 (assessed as a line-staff);
and the Applicant withdrawing his claim for Constructive Unfair Dismissal;

21)Pursuant to **Section 58(1)(a)** of **The Industrial Relations Act, Cap. 321**, the **Tribunal** remitted the trade dispute to the parties' Counsels for further consideration, with a view to settling or reducing the issues of outstanding **Wages** and **Constructive Wrongful & Unfair Dismissal**;

22)The **Applicant** advised that he will testify and not call any witnesses on his own behalf;

23)The **Respondent's Representative** advised that the Respondent will call 1 or 2 witnesses in its defence;

24)The **Tribunal** estimated that the trial may last 1 day;

25)The **Tribunal** directed that the parties produce the original (if available) and 3 copies of all documents upon which they intend to rely at the trial; and

26)**Rule 3(6)** of **The Rules** provides that the parties are at liberty to file **Written Representations** in this matter with the Tribunal at least 7 days prior to the commencement of the hearing;

IT IS HEREBY ORDERED as follows:-

1. This matter is adjourned **10:00 a.m.** on **Wednesday, the 4th September, 2024**, for trial;
2. The **Respondent** file an amended **Form D** (Notice of Appearance) naming the Respondent's President as its Representative by today;
3. The Tribunal directed that the **Respondent's Representative** produce a copy of the Respondent's *Certificate of Referral* as soon as practicable;

4. The **parties** show each other their records of the days the Applicant performed work for the Respondent during the pay period 5th to 19th January, 2024;
5. The **Applicant** notify the Tribunal, in writing, if the parties settled his claim for **Wages**;
6. The **Respondent** pay the sum of **\$ 1,602.00** by direct deposit to the Applicant's Bank account by **Friday, 28th July, 2024**, in full settlement of the claim for Outstanding **Vacation pay**;
7. The parties produce the original (if available) and 3 copies of **all documents** upon which they intend to rely at the trial;
8. The parties file any **Written Representations** by on or before 3:00 p.m. on **Wednesday, the 28th August, 2024**, and at the same time serve a copy thereof on the opposing side; and
9. The Tribunal serve this **Order On Directions** and a **Form J** (Notice of Hearing) for trial on both parties.

DATED: This 21st day of June, A.D., 2024.

**Her Honor, Helen J. Almorales-Jones,
(Acting) President**