

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)

LEONARDO LOCKHART

APPLICANT

BUCKEYE BAHAMAS HUB LIMITED

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Justin Palacios
Labour Advocate
Freeport, Grand Bahama
The Bahamas

For the Respondent

Keith Major, Jr., Esquire
Higgs & Johnson
Chambers
Nassau, New Providence
The Bahamas

WHEREAS:

- 1) On the 2nd October, 2023, **Leonardo Lockhart** ("the Applicant") filed a **Report of a Trade Dispute Form** against **Buckeye Bahamas Hub Limited** ("the Respondent") at **The Department of Labour** ("DOL") in Grand Bahama, The Bahamas, which stated, inter alia, that the issues relevant to the dispute were *Lost Wages, Wages owed, Overtime pay owed, Vacation pay, Notice pay, Wrongful Dismissal & Unfair Dismissal*;
- 2) By a **Certificate of Referral** dated the 5th January, 2024 (received on the 2nd April, 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 3rd April, 2024, the Tribunal served the **Applicant** with notice of the referral;
- 4) The Applicant filed a **Form A** (Originating Application) on the 12th April, 2024, which stated, inter alia, that:-
 - His Occupation/Position was *Assistant Head Operator*;
 - His employment began on the *9th August, 2010*;
 - His termination date was the *22nd September, 2023*;
 - His basic wages was *\$ 3,870.25 per month*;
 - His normal basic weekly hours of work was *40 hours*; &
 - The grounds for his application were:
 - Wrongful Dismissal:** *The Applicant was verbally terminated by the Respondent's Agent; he was never given a termination letter and not paid any statutory entitlements;*
 - Unfair Dismissal:** *Procedural Unfairness;*
 - Vacation pay:** *The Respondent purported to pay it to the Applicant, but he never received it;*
 - Wages owed:** *The Respondent purported to pay the Applicant his final wages, but he never received it;*
 - Overtime pay owed:** *The Applicant worked in excess of the standard weekly & daily hours; &*
 - Lost wages owed:** *the Applicant was unable to fulfil his essential obligations because of the Respondent's Wrongful & Unfair Dismissal;*
- 5) On the 15th April, 2024, the Tribunal served a copy of the **Form A** (Originating Application) together with a **Form C** (Notice of Originating Application) & a blank **Form D** (Notice of Appearance) on the Respondent's place of business;

- 6) On the 22nd April, 2024, the Respondent filed a **Form D** (Notice of Appearance), which indicated that it intended to resist the application;
- 7) On the 7th May, 2024, the Respondent filed a **Form E** (Defence), which stated, inter alia, that:-
- The Applicant was dismissed;
 - The reason for his dismissal was *Fundamental breach of conditions of employment and failing to follow the C-4 Valve Operational/Valve Line-Up Sheets/PBL Delivery Sheets Policy on the 2nd August, 2023*;
 - The dates he gave as to his period of employment was correct;
 - The details of remuneration he stated was correct; &
 - The particulars of the Grounds on which the Respondent intends to resist the application were as set out in the annexed Overleaf;
- 8) Both the a **Form D** (Notice of Appearance) and **Form E** (Defence) filed by the Respondent named Counsel, *Oscar N. Johnson, Jr., K.C.*, as the Respondent's Representative;
- 9) The Tribunal conducted a **Case Management** hearing at 2:00 p.m. today;
- 10) Counsel, *Keith Major, Jr.*, of Higgs & Johnson, New Providence, appeared on behalf of the Respondent and advised that he was holding brief for Counsel, *Oscar N. Johnson, Jr., K.C.*;
- 11) The Tribunal ascertained that the parties disagreed on the issue of, ***Whether or not the Applicant held a supervisory position?***;
- 12) The Tribunal advised that the **Applicant** bore the burden of proving, on a balance of probabilities, that the parties had agreed that he would be paid ***Overtime pay*** although he held a supervisory position;
- 13) The **Applicant's Representative** advised that the Respondent owes the Applicant ***Accrued Vacation pay*** for the period, 1st January, 2023, to 22nd September, 2023, which they claimed they paid him, but he did not receive;
- 14) The **Respondent's Counsel** advised that the Respondent maintains that:-
- it owed the Applicant Vacation pay for 5 accrued and unused Vacation days, as stated in the **Form E** (Defence); &
 - it had just cause to summarily dismiss the Applicant for committing a major breach of the employment contract;

- 15) Pursuant to **Rule 3(3)** of **The Rules**, the Tribunal, of its own motion, directed that the **Applicant's Representative** electronically file written further and better particulars of his claim for **Unfair Dismissal** within 21 days from today;
- 16) **Both parties** agreed that the Respondent did not terminate the Applicant in writing, but sent him an e-mail and then informed of his termination by telephone;
- 17) The **Applicant's Representative** produced 2 documents, one quantifying the Applicant's several claims against the Respondent as a line-staff employee and the other quantifying it as a Supervisor;
- 18) Pursuant to **Section 58(1)(a)** of **The Industrial Relations Act, Cap. 321**, the **Tribunal** remitted the trade dispute to the parties for further consideration, with a view to settling it by the Applicant withdrawing his claim for **Wrongful Dismissal** and the Respondent paying the Applicant a basic award for **Unfair Dismissal**, assessed under **Section 46(1)** of **The Employment Act, 2001**;
- 19) The **Applicant's Representative** advised that the Applicant will testify and call 3 witnesses on his behalf;
- 20) The **Respondent's Counsel** advised that the Respondent may call 4 witnesses in its defence, who may appear virtually;
- 21) The **Tribunal** estimated that the trial may last 2 days;
- 22) **Both parties** agreed to electronically file within 1 month from today:-
 - an **Agreed List of Documents**;
 - an **Agreed Bundle of Documents**; and
 - a **Separate List of Documents & Bundle of Documents** for any other documents;
- 23) **Both parties** agreed to electronically file within 1 month thereafter, **Witness Statements** to stand as the evidence-in-chief of their witnesses;
- 24) The **Tribunal** advised the parties that **Rule 3(5)** of **The Rules** provides that they may file any **Brief/Skeleton Arguments** at least 7 days before the start of the hearing, which the Tribunal requires them to file electronically; and
- 25) The **Tribunal** directed that the parties make a written request to the Tribunal Secretary, for anyone who needs to appear virtually on the trial date and provide the person's e-mail address;

IT IS HEREBY ORDERED THAT:-

1. This matter is adjourned to **10:00 a.m.** on **Monday, 19th & Tuesday, 20th August, 2024**, for trial;
2. The **Respondent** electronically file a **Form P** stating the name of the Respondent's Representative at trial, if it is not Counsel, *Oscar N. Johnson, Jr., K.C.* (was named as the Respondent's Representative in the Respondent's **Form D** (Notice of Appearance) and **Form E** (Defence));
3. The **Applicant's Representative** electronically file **written particulars** of the Applicant's claim for ***Unfair Dismissal*** within 21 days from today (by **Tuesday, 18th June, 2024**);
4. The **Parties' Representatives** electronically file, at least 1 month from today (by **Tuesday, 28th June, 2024**):-
 - An **Agreed List of Documents**;
 - An **Agreed Bundle of Documents**; and
 - A **Separate List of Documents & Bundle of Documents** for any other documents;
5. The **Parties Representatives** electronically file **Witness Statements** (to stand as the evidence-in-chief of their witnesses) at least 1 month thereafter (by **Monday, 29th July, 2024**);
6. The **Parties Representatives** electronically file any **Brief/Skeleton Arguments** at least 7 days before the first trial date (by **Monday, 12th August, 2024**); and
7. The Tribunal serve this **Order On Directions** and a new **Form J** (Notice of Hearing) for trial on the Parties' Representatives.

DATED: This 28th day of May, A.D., 2024.

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