

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)

MATTHEW CAREY

APPLICANT

**LAST MILE COMMUNICATIONS LTD.,
Trading as BAHAMAS WIMAX**

RESPONDENT

ORDER ON DIRECTIONS

APPEARANCES

For the Applicant

Labour Advocate
Justin Palacios
Freeport, Grand Bahama
The Bahamas

For the Respondent

Counsel, Mrs. Annette Cash &
Obie Ferguson, K.C.
Obie Ferguson & Co.
Nassau, New Providence
The Bahamas

WHEREAS:

- 1) On the 28th February, 2024, **Matthew Carey** ("the Applicant") filed a **Report of a Trade Dispute** against **Last Mile Communications Ltd. T/A Bahamas Wimax** with The Department of Labour in Grand Bahama, The Bahamas, which stated, inter alia:-
 - (2a) Job Title of Employee: *Chief Executive Officer*, &
 - (5) Issues relevant to the dispute: *Wages owed, Constructive Wrongful Dismissal, Constructive Unfair Dismissal, Deductions for shares & Breach of contract*;
- 2) By a **Certificate of Referral** dated 13th May, 2024 (received on 6th June, 2024), the Honourable Minister of Labour & The Public Service referred the trade dispute between the **Applicant** and **Last Mile Communication Ltd. T/A Bahamas Wimax** ("the Respondent") 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 12th June, 2024, the Tribunal served the **Applicant** with notice of the referral;
- 4) On the 14th June, 2024, the Applicant filed a **Form A** (Originating Application) which stated, inter alia:-

Occupation/Position: *Chief Executive Officer*;
 Date employment began: *1st December, 2009*;
 Termination date: *24th April, 2024*;
 Basic wages/salary: *\$ 1,922.80*; &
 Grounds for application:

Wages owed: The Respondent refused to compensate the Applicant her agreed salary from the April 2023 pay periods to the 24th April, 2024;

Vacation pay owed: The Respondent is indebted to the Applicant for 8 weeks & pro-rated Vacation for the period 1st December, 2023, to 24th April, 2024;

Constructive Wrongful Dismissal: The Respondent's stripping the Applicant of essential access & refusing to compensate her for the same and to be bound by the essential terms and conditions of employment; &

Constructive Unfair Dismissal: Procedural unfairness, Breach of contract;

- 5) On the 17th June, 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's President, *James Campbell*;
- 6) 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** (by the 24th June, 2024);
- 7) On the 18th July, 2024, the Respondent filed a **Form D** (Notice of Appearance) and a **Form E** (Defence);
- 8) The **Tribunal** today (19th July, 2024) conducted a **Case Management Hearing** in this matter pursuant to **Rule 15** of **The Rules**;
- 9) With no objections by the Applicant's Representative, the Tribunal granted the **Respondent** an extension of time for the late filing of the **Form D** (Notice of Appearance);
- 10) Pursuant to **Section 59(1)(b)(ii)** of **The Industrial Relations Act** ("The **I.R.A.**"), **Cap. 321** and **Rule 16(1) & (2)** of **The Rules**, the Tribunal, of its own motion, and with the consent of both parties:-
 - joined **LAST MILE COMMUNICATIONS LTD., Trading as BAHAMAS WIMAX** as a party (the Respondent); &
 - dismissed **Last Mile Communication Ltd. T/A Bahamas Wimax** from the proceedings;
- 11) The **Parties' Representatives** advised that 2 conciliation meetings were held at The Department of Labour, which did not resolve any of the issues;
- 12) The **Applicant's Representative** produced a **Quantification of Claim**, which assessed the Applicant's claims against the Respondent;
- 13) The **Respondent's Counsel** advised that the Respondent is entitled to set off the moneys the Applicant misappropriated from the Company after he was notified that he was removed as a Director of the Company;
- 14) On the informal application of the **Respondent's Counsel**, and with the consent of the **Applicant's Representative**, the Tribunal granted the Respondent leave to file an amended **Form E** (Defence) within 14 days from today, responding to the Applicant's claim for the refund of the moneys the Respondent deducted from his wages to purchase of shares in the Company;

15)The Tribunal advised the **Respondent's Counsel** that:-

- It must prove that the Respondent has been adjudged Bankrupt/Insolvent by a Court of law;
- It must produce legal authorities to support the assertion made in its **Form E** (Defence) that a claim by an Employee against a Bankrupt/Insolvent Employer is frivolous, vexatious and an abuse of the Court;
- The Tribunal cannot hear a Counterclaim from the Respondent for moneys it alleges the Applicant misappropriated from the Company after he was notified that he was removed as a Director of the Company; &
- The Respondent can seek to set off the moneys it proves the Applicant misappropriated from the Company (after he was notified that he was removed as a Director of the Company) against an award the Tribunal makes under Section 29 of The Employment Act;

16) The **Applicant's Representative** advised that the Applicant:-

- was claiming **\$ 6,650.00** for outstanding Wages representing the balance of his wages of \$ 475 per week for 14 weeks (from the 24th May, 2023 to the 28th August, 2023) the Respondent paid him a reduced salary beyond the 10 weeks he had agreed to accept a reduced salary;
- was claiming **\$ 8,332.13** for 1 month's outstanding Wages for the period 30th August, 2023 to the 30th September, 2023);
- is withdrawing his claim against the Respondent for Constructive Wrongful Dismissal & Constructive Unfair Dismissal given the contents of his resignation letter dated the 18th August, 2023;

17)The **Tribunal** advised that it cannot adjudicate on the Applicant's claim for *Breach of contract* as it is a generic claim unless it specified the contract term the Respondent allegedly breached;

18)The **Respondent's Counsel** requested that the Applicant:-

- Provide them with all employment/wage records and any other items currently in his possession which are the property of the Respondent;
- Adduce proof that the Respondent paid the Applicant a reduced wage of \$ 1,477.80 from the 23rd May, 2023, to the 28th August, 2023; &
- Adduce proof of the last date the Applicant physically worked for the Respondent;

- 19) Pursuant to **Section 58(1)(a)** of **The I.R.A.**, the **Tribunal** remitted the trade dispute to the parties for further consideration, with a view to settling the issues (outstanding Wages and re-imbursalment of Wage Deductions for the purchase of Shares) out of Court;
- 20) The **Applicant's Representative** advised that the Applicant will testify and may call 4 witnesses on his behalf;
- 21) The **Respondent's Counsel** advised that the Respondent will call 1 witness in its defence;
- 22) The **Tribunal** estimated that the trial may last 2 days;
- 23) The **Tribunal** directed that:-
- Both parties electronically file their **List of Documents & Bundle of Documents** by on or before the 30th August, 2024;
 - The Applicant's Representative electronically file **Witness Statements** for the Applicant and his Witnesses by on or before the 1st October, 2024;
 - The Respondent's Counsel file **Witness Statements** for the Respondent's Witness by on or before the 15th October, 2024; and
- 24) **Rule 3(5)** of **The Rules** provides that the parties are at liberty to file a **Brief/ Skeleton Arguments** at least 7 days prior to the commencement of the trial;

IT IS HEREBY ORDERED THAT:-

1. The Applicant's claims for **Wrongful Dismissal** and **Unfair Dismissal** are hereby dismissed;
2. The Applicant's claims (for **Outstanding Wages** and **Re-imbursalment of Wages deducted for the purchase of Company shares**) are adjourned for trial at 10:00 a.m. on Tuesday, 22nd & Wednesday, 23rd October, 2024;
3. The **Respondent** electronically file an **Amended Form E** (Defence) by on or before Friday, 2nd August, 2024;
4. The **Applicant's Representative** forthwith provide the Respondent's Counsel with any physical property of the Respondent that is still in the Applicant's possession;

5. **Both Representatives** electronically file their **List of Documents & Bundle of Documents** by on or before Friday, 30th August, 2024;
6. The **Applicant's List of Documents** and **Bundle of Documents** include:-
 - all employment/wage records and/or documents currently in the Applicant's possession, including paystubs, Quickbooks Spreadsheets, e-mails & electronic data;
 - proof that the Respondent paid him a reduced wage of \$ 1,477.80 from the 23rd May, 2023, to the 28th August, 2023; &
 - proof of the last date the Applicant physically worked for the Respondent;
7. **The Applicant's Representative** electronically file **Witness Statements** for the Applicant and his Witnesses by on or before Tuesday, 1st October, 2024;
8. The **Respondent's Counsel** file **Witness Statements** for the Respondent's Witness by on or before Tuesday, 15th October, 2024;
9. The **Parties' Representatives** electronically file any **Brief/Skeleton Arguments** by on or before Tuesday, 15th October, 2024; and
10. The Tribunal serve this **Order On Directions** and a new **Form J** (Notice of Hearing) on both parties' Representatives.

DATED: This 19th day of July, A.D., 2024.

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