

**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)**

---

**WANDA 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 28<sup>th</sup> February, 2024, **Wanda 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: *Accounts Manager*, &
  - (5) Issues relevant to the dispute: *Wages owed, Breach of contract, Wrongful Dismissal, Unfair Dismissal, Vacation pay, Severance pay & Notice pay*;
- 2) By a **Certificate of Referral** dated 13<sup>th</sup> May, 2024 (received on 6<sup>th</sup> 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 12<sup>th</sup> June, 2024, the Tribunal served the **Applicant** with notice of the referral;
- 4) On the 14<sup>th</sup> June, 2024, the Applicant filed a **Form A** (Originating Application) which stated, inter alia:-

Occupation/Position: *Accounts Manager*;  
 Date employment began: *1<sup>st</sup> December, 2009*;  
 Termination date: *24<sup>th</sup> April, 2024*;  
 Basic wages/salary: *\$ 984.80 weekly*; &  
 Grounds for application:

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

*Vacation pay owed*: *The Respondent is indebted to the Applicant for 8 weeks & pro-rated Vacation for the period 1<sup>st</sup> December, 2023, to 24<sup>th</sup> 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 17<sup>th</sup> 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 24<sup>th</sup> June, 2024);
- 7) On the 18<sup>th</sup> July, 2024, the Respondent filed a **Form D** (Notice of Appearance) and a **Form E** (Defence);
- 8) The **Tribunal** today (19<sup>th</sup> 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) and 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; &
  - Advised that the Applicant was claiming that she was constructively wrongfully dismissed and constructively unfairly dismissed by the Respondent from the date of the second conciliation meeting at The Department of Labour: the 24<sup>th</sup> April, 2024;
- 13) The **Tribunal** advised that:-
  - The Applicant filed this Report of a Trade Dispute at The Department of Labour on the 28<sup>th</sup> February, 2024, claiming that the Respondent had wrongfully and unfairly dismissed her; &

- On the authority of The Bahamas Court of Appeal Decision of ***Island Hotel Company Limited v. John Fox***, IndTripApp 54/2017, the Tribunal only has jurisdiction to hear the claims the Applicant made against the Respondent in the **Report of a Trade Dispute**, which did not include claims for Constructive Wrongful Dismissal or Constructive Unfair Dismissal (the Applicant had deleted the word, "*Constructive*" on the Form and initialled the change);

14)The **Applicant's Representative** advised that the Applicant will withdraw her claims for **Wrongful Dismissal** and **Unfair Dismissal** and file another Report of a Trade Dispute against the Respondent for **Constructive Wrongful Dismissal** and **Constructive Unfair Dismissal**;

15)The **Tribunal** ascertained that the Applicant was claiming from the Respondent:-

- *The difference in her **Wages** during 26 weeks and 4 days when the Respondent continued to pay her a reduced wage of \$ 608.88 past the 10 weeks that she had agreed to accept a reduced wage (from the 14<sup>th</sup> March, 2023 to the 23<sup>rd</sup> May, 2023; \$ 375.92 per week x 26 weeks = \$ 9,773.92);*
- *Her full **Wages** owed from the 26<sup>th</sup> November, 2023 up to the 28<sup>th</sup> February, 2024 (\$ 984.80 per week x 18 weeks = \$ 17,726.40); &*
- *8 weeks' **Vacation pay** owed from 2018 to 2023 (\$ 984.80 per week x 8 weeks = \$ 7,878.40) plus Accrued Vacation pay for the period 2<sup>nd</sup> December, 2023 to 28<sup>th</sup> February, 2024 (89 days or 0.24 of a year x \$ 984.40 = \$ 218.18);*

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

- Provide them with all employment/wage records for the Applicant that is currently in their possession;
- Adduce proof that the Respondent paid her a reduced wage of \$ 608.88 from the 23<sup>rd</sup> May, 2023 to the 24<sup>th</sup> November, 2023;
- Adduce proof of the dates that the Applicant took Vacation leave; &
- Adduce proof of the last date that the Applicant physically worked for the Respondent;

17)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 of outstanding Wages and Vacation pay out of Court;

18)The **Tribunal** advised that it will consolidate this matter with any other trade dispute that The Department of Labour refers to it between these parties;

- 19)The **Applicant's Representative** advised that the Applicant will testify and call 3 witnesses on her behalf; and
- 20)The **Respondent's Counsel** advised that the Respondent will call 1 witness in its defence;

**IT IS HEREBY ORDERED THAT:-**

1. The **Respondent** is granted an extension of time for the late filing of its **Form D** (Notice of Appearance);
2. The Applicant's claims for **Wrongful Dismissal** and **Unfair Dismissal** are hereby dismissed;
3. The **Parties' Representatives** continue settlement talks with a view to settling the remaining issues of **Wages** and **Vacation pay** out of Court;
4. The **Applicant's Representative** e-mail the Respondent's Counsel:-
  - all employment/wage records for the Applicant currently in the Applicant's possession;
  - proof that the Respondent paid her a reduced wage of \$ 608.88 from the 23<sup>rd</sup> May, 2023 to the 24<sup>th</sup> November, 2023;
  - proof of the dates that the Applicant took Vacation leave; &
  - proof of the last date that the Applicant physically worked for the Respondent;
5. This matter be adjourned to **10:00 a.m.** on **Monday, 11<sup>th</sup> November, 2024**, for further hearing; and
6. The Tribunal serve this **Order On Directions** and a new **Form J** (Notice of Hearing) on both parties.

**DATED: This 19<sup>th</sup> day of July, A.D., 2024.**

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