

INDUSTRIAL DISPUTES TRIBUNAL
Dispute No.: IDT 1/2019

SETTLEMENT OF DISPUTE

BETWEEN

BRANCH DEVELOPMENT LIMITED

(T/A IBEROSTAR ROSE HALL BEACH & SPA RESORT)

AND

MR. TREVOR BEADLE

AND THE

AWARD

I.D.T. DIVISION

MISS MARSHA SMITH	-	CHAIRMAN
MRS. JACQUELINE IRONS, JP	-	MEMBER
MRS. CHELSIE SHELLIE VERNON	-	MEMBER

JANUARY 30, 2020



Ms

INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
BRACH DEVELOPMENT LIMITED
(T/A IBEROSTAR ROSE HALL BEACH & SPA RESORT)
(THE COMPANY)
AND
MR. TREVOR BEADLE
(THE AGGRIEVED)

REFERENCE:

By letter dated January 8, 2019, the Honourable Minister of Labour and Social Security, in accordance with Section 11(1) of the Labour Relations and Industrial Disputes Act of 1975 (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein: -

The Terms of Reference were:

“To determine and settle the dispute between Branch Development Limited (t/a Iberostar Rose Hall Beach & Spa Resort) on the one hand and Mr. Trevor Beadle on the other hand over the termination of his employment.”



DIVISION:

The Division of the Tribunal which was selected in accordance with Section 8(2) (c) of the Act to hear the matter comprised:

- Miss Marsha Smith - Chairman
- Mrs. Jacqueline Irons, JP - Member, Section 8(2) (c) (ii)
- Mrs. Chelsie Shellie-Vernon - Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- Mr. Gavin Goffe - Attorney-at-Law
- Mr. Jahmar Clarke - Attorney-at-Law
- Mrs. Noveta McNaught-Williams - Paralegal

In attendance was:

- Dr. G. Anthony Ferguson - Human Resources Director

The **Aggrieved** was represented by:

- Mr. Jovell Barrett - Attorney-at-Law
- Ms. Alexandria Fennell - Trainee Associate

In attendance was:

- Mr. Trevor Beadle - Aggrieved Worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties and oral submissions made during six (6) sittings held between March 19, 2019 and June 11, 2019.



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BACKGROUND TO THE DISPUTE:

1. Branch Development Limited (t/a Iberostar Rose Hall Beach and Spa Resort) (*hereinafter referred to as the Company*) is a limited liability company which operates as a hotel. Mr. Trevor Beadle (*hereinafter referred to as the Aggrieved Worker*) was employed to the Company in April 2007 as a mason and was promoted to Maintenance Supervisor, a position he held up until the time of his dismissal in January 2017. By way of letter dated January 12, 2017, the Aggrieved Worker was charged with ***Inefficiency (Deterioration of application & performance)*** and ***Insubordination***. A disciplinary hearing held on January 23, 2017, resulted in the termination of the Aggrieved Worker's employment by way of letter dated January 27, 2017. The Aggrieved Worker was granted an appeal. The appeal upheld the decision of the disciplinary panel. Notwithstanding the appeal, Mr. Trevor Beadle protested his termination and sought the assistance and intervention of the Ministry of Labour and Social Security to settle the dispute between himself and the Company. No resolution was reached, and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE:

1. The Company called one witness, Dr. Anthony Ferguson, its Human Resources Director. He testified in examination in chief that he was employed to the Company in 2008 as the Human Resources Director. He knew the Aggrieved Worker as he was previously employed to the Company. The Aggrieved Worker's services were terminated after charges laid against him were made out. The background to the charges was an incident on January 8, 2017 between Mr. Andrew Wright, the Assistant General Manager and the Aggrieved Worker. Mr. Wright reported that the Aggrieved Worker was insubordinate, did not execute his duties and responsibility as a supervisor and that the Aggrieved Worker spoke to him in a tantrum in a public space. Mr. Wright made his report to Human Resources in writing. The report was an email dated January 8, 2017 (Exhibit 2). As a result of the report, HR invited the Aggrieved Worker in writing to a hearing as per the Labour Relations Code. The Aggrieved Worker was allowed to have representation. The hearing was convened on January 23, 2017. The charges laid against the Aggrieved



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Worker were made out at the hearing and the sanction applied by the panel was dismissal. The decision of the panel was communicated to the Aggrieved Worker via letter dated January 30, 2017 (Exhibit 4). The Aggrieved Worker appealed the decision. An appeal was chaired by Mr. Philip Hofer, the Managing Director. The decision of the panel was upheld on appeal.

2. The Aggrieved Worker was employed for a period of ten (10) years and his employment record consisted of many suspensions including using guest facilities and improper behaviour. He was suspended on three (3) occasions. He was terminated as opposed to being suspended or warned because of the infraction he committed. At the hearing the Aggrieved Worker made it clear that it was not his responsibility to execute the function stipulated by his supervisor, Mr. Wright. The Aggrieved Worker said that he was not going to walk behind anyone. As a supervisor, the Aggrieved Worker had the responsibility to check the work of his line staff.
3. Under cross examination Dr. Ferguson testified that in January 2017, the Aggrieved Worker was aware of his duties as supervisor. The Hotel had three (3) or four (4) maintenance supervisors but he was unable to confirm how many were present on the shift on the day in question. All maintenance supervisors had similar roles. The Iberostar Rose Hall Beach and Spa Resort has in excess of three hundred (300) rooms.
4. As a part of his duties the Aggrieved Worker was required to supervise line staff. The line staff includes masons, electricians, plumbers and room technicians. He could not recall if at the disciplinary hearing it was stated that the Aggrieved Worker was tying down shutters at another part of the property at the time when Mr. Wright called him to attend to the pool deck. He was unable to say how far the shutters were from the pool deck. Dr. Ferguson said that pool attendants are under the umbrella of the maintenance department and are required to clean the pool deck. The Aggrieved Worker supervised that function. He was unable to say if pool attendants were at the work the evening of January 8, 2017. He agreed that it was the job of the pool attendants to attend to the pool. He disagreed with the suggestion that if the Aggrieved Worker was at another part of property when the pool was a mess, it was unreasonable to expect him to be also at the pool deck supervising the pool attendants. He said it was the Aggrieved Worker's responsibility to check that line staff executed their functions. The staff was equipped



with radios and phones. They can communicate via radio and can supervise from a remote location. He did not know the set-up time for the pool area, as an operations person was better able to respond to a question like that. He was unable to say if the pool area was eventually cleaned by the Aggrieved Worker.

5. He said that information had come to him that the Aggrieved Worker was an Adventist but was not able to say when he received this information as he does not pay attention to persons' religious denominations as a habit. The Company did not have a policy of discriminating based on religious beliefs. He said there were many approaches to scheduling an Adventist for work. There were some who worked on their Sabbath and there were some who did not. He was unaware of the Company scheduling a person who did not want to work on their Sabbath, to work on their Sabbath.
6. He said in making the decision to dismiss the Aggrieved Worker, his entire employment record was taken into account. He agreed that some of the offences committed by Mr. Beadle occurred prior to 2015. It was the policy of the Company to allow warnings to lapse. He explained the lapse policy by stating that warnings are not considered relevant after the period stated.
7. The Aggrieved Worker was suspended November 2, 2016, for use of guest facilities. He was unable to say if the Aggrieved Worker was given a written letter when he suspended. He agreed that it was the company's policy that where an employee was suspended, a final written warning was given and placed on the employee's record and the final written warning lapsed after eighteen (18) months. He also agreed that verbal warnings lapsed after six (6) months and written warnings lapsed after twelve (12) months. He said that the Company had a policy of progressive discipline and it still had to consider the employee's record in determining action. He said the lapse policy and Article 27 were both guidelines from the company's handbook (Exhibit 6). Article 27 of Exhibit 6 is set out below:

"Article 27: IBEROSTAR will use the right of termination in all cases that it considers necessary and may not be expressed in the preceding article, being subject, whenever it corresponds, to the payment of the legal indemnities. Leniency may also be applied, depending on the case."



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8. Dr. Ferguson disagreed with the suggestion that Article 27 did not allow the Company to consider offences that were lapsed in making decisions regarding the employee. He agreed that Aggrieved Worker was charged with two offences in January 2017. He could not recall the date of the Aggrieved Worker's last performance evaluation. He was shown the Company handbook where it was set out that the sanction for a first (1st) offence of inefficiency was a verbal warning, a second (2nd) offence was a written warning and a third (3rd) offence was a suspension. He was then asked if the January 2017 charge of inefficiency was the first (1st) charge. He said that he was not sure if the January 2017 charge was the first time the Aggrieved Worker was being charged for inefficiency. He would prefer to check the record. It was also put to him that for a first (1st) offence of insubordination the disciplinary measure was only a verbal warning. He disagreed with the suggestion as not being correct. It was also put to him that for a first (1st) offence of inefficiency the disciplinary measure was verbal warning. He said that disciplinary measures were guided by what was laid out in the handbook, but that there were other policies and things that needed to be considered. He said employees were made aware of the additional things. Each employee got a copy of the handbook. He agreed that it was the policy of the hotel that no employee is suspended or dismissed without due process. He disagreed with the suggestion that in failing to advise the Aggrieved Workers that his employment record would be taken into account, the Company failed to act in accordance with its own policy in the handbook.
9. He was a part of the panel that found that the charges were made out. The purpose of the disciplinary hearing was to allow the Aggrieved Worker the chance to answer to the charges laid against him for inefficiency (deterioration of application & performance) and insubordination. Mr. Wright was not a part of the panel that decided on the dismissal of the Aggrieved Worker, he was the complainant. The Aggrieved Worker's deterioration in performance was implied from written and final warnings. He was suspended multiple times. He disagreed with the suggestion that the Company had no evidence to justify the dismissal on the charge of inefficiency (deterioration of application & performance) and insubordination.
10. The Aggrieved Worker had been charged with gross misconduct in 2012 and was suspended. The Company exercised leniency using Article 27 of the Company's



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handbook as it was a dismissible offence. Apart from circumstances of gross misconduct, Article 27 allows for dismissal. The panel took into consideration Article 27 in making its decision to terminate. They also took into consideration the case at hand the employees record and progressive discipline. He disagreed that by taking past offences into consideration the Company was not acting in accordance with the Company's handbook. He disagreed that the Company dismissed Mr. Beadle without 'just cause'.

11. He was not re-examined and in response to questions from the panel, he stated that Article 27 of the Company's handbook allowed for leniency as well as dismissal.

THE COMPANY'S CONTENTIONS:

12. The Company was justified in its decision to terminate the contract of employment of the Aggrieved Worker. It acted in accordance with Labour Relations Code and the principles of natural justice. Due process was observed, and the charges laid against the Aggrieved Worker were made out. The Aggrieved Worker in his testimony accepted that the charges were given to him in writing. The Company informed him in writing of his right to be represented and to respond to the charges.
13. The Aggrieved Worker did not deny saying to his supervisor "You tell me". He maintained that his response to his supervisor was just man to man and not disrespectful. During cross examination he admitted that he realized that the act of walking away from his supervisor was wrong and that he should have been apologetic and asked for leniency.
14. The Aggrieved Worker exercised his right of appeal and lodged a formal appeal. The appeal was heard by a third party unconnected with the first hearing and the decision of the appeal hearing was to uphold the termination.
15. Based on the evidence presented, there was a proper foundation of facts on which the disciplinary panel could have grounded the charges of insubordination and inefficiency (deterioration of application & performance).
16. The Company did not take into account charges that were not put to the Aggrieved Worker in writing. There were only two charges brought against the Aggrieved Worker.



17. Nowhere in the Labour Relations Code does it say that a company is not allowed to consider an employee's employment record when the company addresses its mind to the sanction to be imposed.
18. This was not the Aggrieved Worker's first breach of discipline. The argument that the Aggrieved Worker was a first-time offender because this was his first time being charged with those two particular offences during his employment at the Company offends logic. Such an argument is contrary to the provisions of the Labour Relations Code at 22(ii) (b) which states that "*No workers should be dismissed for a first breach of discipline except in the case of gross misconduct.*"
19. The employment record of the Aggrieved Worker was considered by the disciplinary panel when it addressed its mind to the sanction that was to be imposed against the Aggrieved Worker. Similar to a court where someone has been convicted, the Court can consider the offender's criminal record when it addresses its mind to the sanction to be imposed. The Company is entitled to consider the employment record of all its employees when faced with a decision on what consequence should flow from an employee's misconduct.
20. Nowhere in the handbook does it say that a suspension lapsing. It speaks to the lapse of final and written warnings and the suspensions remained a part of the Aggrieved Worker's employment record.
21. The Company considered Article 27 of its handbook which states that the Company will use the right of termination in all cases that it considers necessary. It also says that leniency may also be applied. Article 27 allows for aggravating and mitigating circumstances to be taken into account. Based on the evidence, there were only aggravating circumstances in the case against the Aggrieved Worker. The sanction of termination was fair and reasonable in the circumstances. Based on his own evidence the Aggrieved Worker admitted to walking away while his supervisor was speaking to him. The Aggrieved Worker maintains to this day that he does not see where he did something wrong. He does not deny saying "You tell me" to his direct supervisor when he was asked why the pool deck was in a state of disorganization. He is still of the opinion that his behavior was appropriate.



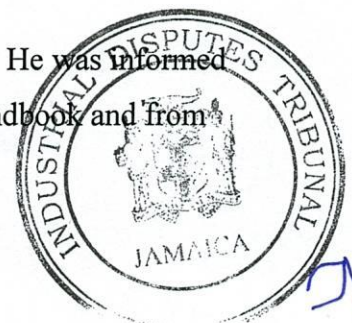
22. The Aggrieved Worker does not want back his job. He is seeking compensation. The Aggrieved should not be compensated. His dismissal was justified. The facts of this hearing support the case that at the very least the charges against the Aggrieved Worker were made out.

THE AGGRIEVED WORKER'S CASE:

23. The Aggrieved gave evidence on his own behalf. He testified that he is currently a taxi operator and previously worked for the Company starting in 2007 as a mason. He was wrongfully dismissed in January 2017 when he held the position of Room Supervisor. He had been promoted over the years from Room Technician in 2008 to Room Supervisor in 2012. His performance was evaluated in 2011-2012 and as a result of an excellent assessment he was promoted to Room Supervisor. He worked from 8:00 a.m. to 5:00 p.m. or 3:00p.m. to 11:00p.m. five (5) days a week from Sunday to Friday as Saturday was his day off and he worshipped on that day. The hotel was aware that he observed Saturday as his day of worship and he was not required to work on that day at first, but sometime later he was scheduled to work on Saturdays and on those occasions his Manager would stay until he came from church.
24. He recalled having a discussion with Mr. Andrew Wright, Assistant Manager of the Company at the pool area of Iberostar Rose Hall Beach and Spa Resort on January 8, 2017. At about 7:45 p.m. Mr. Wright called him and asked, "*Why the pool deck looks like this?*". His response to Mr. Wright was "*You tell me.*" He did not intend to be disrespectful to anyone. He did not know that the person who should have set up the pool area was not at work as no one said anything to him. Mr. Wright asked him when he was going to set up the pool deck and he told Mr. Wright that he did not know, however, within thirty (30) minutes after the conversation with Mr. Wright he set up the pool deck and Mr. Wright passed by and told him thanks.
25. On Monday, January 12, 2017, he was called by the Human Resources Department and informed that he should see the secretary. She told him that there was a written report from Mr. Wright. He felt really bad about the report as Mr. Wright did not tell him to



- stop what he was doing. Mr. Wright told him thanks for completing the task and at the same time he wrote him up.
26. He said that he was a Room Supervisor and that the pool had a supervisor. His job was to ensure that the line staff performed their duties and sometimes the Supervisor had to perform line staff duties. He was never given a job description by the Company. He received a copy of Mr. Wright's report from the Secretary as well as a letter dated January 12, 2017 outlining that he was disrespectful and insubordinate. He took the letter to his lawyer. He said a copy of the Company's Disciplinary Code and Mr. Wright's report were attached to the letter inviting him to the disciplinary hearing.
27. He attended the hearing with Ms. Allison T. Lawrence, a lawyer from the law firm, Nigel Jones & Company. The panel comprised Dr. Ferguson, Clayton Moody, Mr. Goffe and the Secretary, Shena Stewart. At the hearing there was a discussion of the various speeches made between himself and Mr. Wright. His lawyer said that his statement "**You tell me**" was man to man speech and that there was no intent to hurt anyone. At the meeting they mentioned his other suspensions which he was not prepared to deal with. He received a suspension in about 2012 for a failure to put back a TV in a room. He also received a suspension when he asked his female manager for a piece of her apple. He suspended when the pool had a hole inside of it and he did not let out the water as instructed. His final suspension was in 2016 for using guest facilities. There was a long debate at the hearing, with his lawyer saying that the previous suspensions should not be brought up. He said apart from Mr. Wright's report of January 8, 2017 regarding his performance, the only other issue regarding his performance discussed at the hearing was an incident when he threw away the lunch served to him in the canteen because the canteen lady spoke over it. At that time, there was a meeting where he was told that he disrespected the person who served the food. He said no one said anything to him about his performance deteriorating. He described his performance as excellent, as among the staff there was no better supervisor than him. Dr. Ferguson knew that, as when he wanted things done off property, he was the one that Dr. Ferguson called. He received two (2) awards in 2012 and 2013 for Supervisor of the Quarter.
28. The January 8, 2017 was the only disciplinary hearing that he attended. He was informed of his dismissal in writing. He said he was aware of the Company's handbook and from



his recollection of it, if someone was found guilty of inefficiency (deterioration of application & performance), the sanction was a verbal warning for the first (1st) offence and written warning for the second (2nd) offence. The charge in January 2017 was the only time he knew of he being charged with inefficiency (deterioration of application & performance). Based on his knowledge of the handbook the sanction for insubordination was verbal warning for the first (1st) offence and written warning for the second (2nd) offence. He was charged with insubordination only one time.

29. His salary was \$50,000 plus every two (2) weeks. He became a taxi operator in March 2018 when his road licence was issued. His earning as a taxi operator was about \$15,000.00 per day. He said he did not receive from the Company his outstanding vacation leave payment or notice pay. He did not wish to be considered for reinstatement with a **“Capital NO”**. He said **“If you can do good and everyone is against you, then why go back into the ants’ nest. I am free.”**
30. During cross examination it was suggested to the Aggrieved Worker that Mr. Goffe had been present at the appeal and not the disciplinary hearing. He said he could not recall when he saw Mr. Goffe. He did not agree that he was insubordinate in January 2017. He said nothing was wrong in what he said to his Supervisor as they were talking “man to man”. He admitted that he never apologized to Mr. Wright for how he spoke to him. He insisted that he did not do anything disrespectful and that it was not an event to get a warning or suspension. He recalled his lawyer saying at the hearing that even if he was insubordinate it was his first offence so therefore it only warranted a warning. His performance was excellent up to the time of his dismissal as he completed what he was asked to do and there was nothing wrong with his performance or conduct on the day in question in January 2017.
31. When he was shown Exhibit 3 (a letter dated January 25, 2017 from his lawyer), he agreed that it was stated at the hearing that he did not mean to be insubordinate. That letter said in part as set out below: -

“The undersigned’s response on behalf of Mr. Beadle was that Mr. Beadle was speaking out of frustration and in no way intended to be insubordinate to Mr. Wright.”



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32. He said he was not frustrated when he said, *“You tell me.”* When he turned and walked away from Mr. Wright it was because he thought he had finished speaking to him. He recalled that Mr. Wright had put in his report that he walked away while he was speaking to him. Exhibit 2 (the report from Mr. Wright) was shown to him and he was directed to portion of the report that states as follows:

“He became upset and began to walk away so I walked behind him and continued expressing my point of view about all that he was saying.”

33. He insisted that he thought Mr. Wright had finished talking. He did not apologize to Mr. Wright at the hearing and he regretted not doing so. It was put to him that he was charged with inefficiency (deterioration of application & performance) in May 2012. He said he could not recall but he knew that he was suspended regarding a hole in the pool. He was shown Exhibit 3, the letter from his lawyer and he then agreed that in May 2012 he was charged with inefficiency (deterioration of application & performance). At first, he said he did not recall Article 27 of the handbook being discussed at the January 2017 hearing. When he was shown Article 27 in the handbook (Exhibit 6), he said that there was a possibility that he heard it at the hearing.

34. It was put to him that after Mr. Wright’s statement was read by Dr. Ferguson at the hearing, that his lawyer Ms. Lawrence said that she was willing to accept a verbal warning in relation to the charge of insubordination and a written warning in relation to the charge of inefficiency and deterioration of performance. He responded he could not recall. He said it was not correct to look at the entire employment record, good or bad, when determining a sanction.

35. He insisted that he never owned or operated a taxi while in the employment of the Company and he stood by his record that it was March 2018, when he started to operate a taxi. He did not operate the taxi prior to getting a road licence but he would carry people to their destination, and they would pay him. He was not sure if he began getting paid to carry people in 2016, he would have to double check when he bought the vehicle and other factors. A copy of the tax receipt for PPV plates dated May 18, 2017, was admitted as Exhibit 7. He then changed his earlier testimony and stated that he started operating as a legal taxi in May 2017.

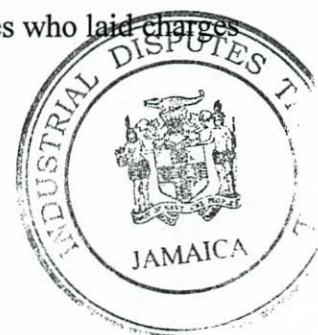


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36. Under re-examination Mr. Beadle testified that he was unable to recall when he received the licence plates for his taxi, but that he received his road licence from the Transport Authority in February 28, 2018. The Transport Authority road licence dated February 28, 2018 was admitted as (Exhibit 8). Even though he earned more as a Taxi Operator, his expenses were very heavy. He had to buy tire, gas, he had to maintain the car and buy parts and pay taxes. He said that once you signed up for a PPV licence you had to pay a quarterly tax every three months. His quarterly tax was \$50,000.00. After deduction of expenses he earned about \$70,000 to \$80,000 per month. He felt that offences that had lapsed should not be revisited. He felt that one should not use one situation to judge another situation, only the immediate situation should be used.
37. Mr. Beadle was questioned by the panel. He stated that he was never scheduled to work on Saturdays in the morning. He could not recall if Mr. Wright had two recent meetings with maintenance department where the overall deterioration of performance of members was discussed. He was not sure if he was paid for unused vacation leave but when he was shown the termination letter (Exhibit 4), he then said it was possible that the funds were transferred to his NCB account and went towards his loan. He said that his relationship with Mr. Wright was good as it was normal for him to talk to him in the way he did.

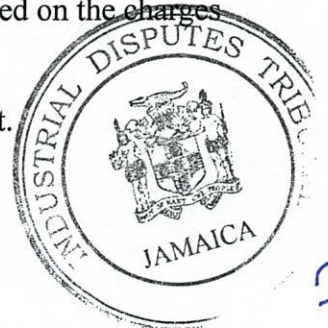
THE AGGRIEVED WORKER'S CONTENTION:

38. Natural Justice and due process were not afforded to the Aggrieved Worker in that the Company breached its policy by not acting in accordance with its own employee policy handbook. According to the employee handbook, written warnings are to lapse over a 12-18-month period, depending on the type of offence.
39. The both charges were not fully made out against the Aggrieved Worker when the decision was made to dismiss him from his employment.
40. Natural Justice was breached in that the participants of the Tribunal who were present at the disciplinary hearing of the Aggrieved Worker were also the ones who laid charges against him.



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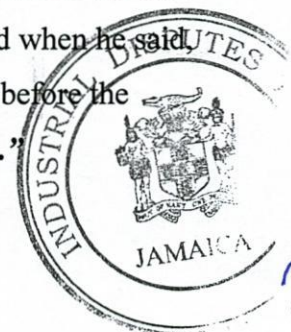
41. Based on the stipulations in the handbook, the Aggrieved Worker had a legitimate expectation to believe that the Company would mete out disciplinary action for the allegations against him in the manner expressed in the handbook. He was not fully apprised of the allegations that would be taken into account ahead of the decision being taken by the Company to terminate his employment.
42. The 2017 charge of inefficiency was the Aggrieved Workers first infraction within that charge. In order for a person to be adequately charged for such an offence, that a particular person would need to have progressively worsened in his performance. It being his first alleged offence, if he were found guilty, the disciplinary action that should have been taken is a verbal warning and not a dismissal.
43. The Aggrieved Worker was only charged with insubordination on one occasion during his employment. A dismissal was not warranted as a first offence, only a verbal warning.
44. Article 27 of the handbook breaches the principles of Natural Justice and principles outlined in Section 22 (i) (a)to(d) of the Labour Relations Code. The true interpretation of Article 27 only allows for dismissal in cases not provided specifically in the handbook.
45. The Aggrieved Worker was unfairly and irregularly dismissed by the Company. The Company failed to follow the procedures in the company handbook. It had no regard for Natural Justice, fairness and due process. Article 27 in the Company handbook is an unfair clause, as the Company can rely on this clause in justifying its actions to dismiss an employee. The Aggrieved Worker did not deserve to be dismissed on the charges that were laid against him, but rather he was owed a verbal warning. The Company breached its own company policies and due to this, the termination of the Aggrieved Worker's employment was both irregular and unfair.
46. In conclusion, the Aggrieved Worker submitted that he was unfairly and irregularly dismissed due to the Company not following its own procedure implemented and reiterated in the Company handbook. The Company had no regard for Natural Justice, fairness and due process which is rightly owed to its staff members. Article 27 is an unfair clause as the Company can rely on this clause in justifying its actions to dismiss an employee. The Aggrieved Worker did not deserve to be dismissed based on the charges that were laid against him, but rather was owed a verbal warning
47. The Aggrieved Worker will accept compensation and no reinstatement.



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THE TRIBUNAL'S FINDINGS:

48. The Tribunal in arriving at its findings took note of all the evidence both documentary and oral and concluded that:
1. The Aggrieved Worker was informed in writing of the matters giving rise to the disciplinary action by way of letter dated January 12, 2017.
 2. At the disciplinary hearing on January 23, 2017 the Aggrieved Worker was represented by his Attorney-at-Law.
 3. The complainant in the disciplinary hearing was Mr. Andrew Wright and not Dr. Ferguson. The letter from the Aggrieved Worker's Attorneys-at-Law (Exhibit 3) described Mr. Andrew Wright as being the complainant.
 4. The Aggrieved Worker was notified of his right of appeal in his termination letter and the appeal hearing was chaired by Mr. Philip Hofer, the Managing Director.
 5. The Aggrieved Worker admitted to four previous suspensions, one more than the number of suspensions stated by both Dr. Ferguson and the letter from his lawyer (Exhibit 3).
 6. The Tribunal finds that by his own testimony, Aggrieved Worker was fully aware of all infractions committed by him and was able to address and explain each when examined thereon.
 7. The evidence presented shows that there was a basis for the charges being brought against the Aggrieved Worker and shows that they were made out at the disciplinary hearing.
 8. The Tribunal finds that the Aggrieved Worker was not a credible witness. He was evasive in parts of his testimony. He stated initially that he did not receive vacation leave and notice pay from the Company but when shown with the termination letter (Exhibit 4) which outlined the payment made to him, he said it was possible that it was lodged to his bank account. He also gave oral evidence which was in direct contradiction to the documentary evidence he was relying on. One such example is Exhibit 3 the letter from his lawyer. Exhibit 3 records that his lawyer stated at the disciplinary hearing that he was frustrated when he said, "You tell me". However, the Aggrieved Worker's oral evidence before the Tribunal is that he was not frustrated when he said, "You tell me."



9. The Aggrieved Worker is gainfully employed as a taxi operator and earns more than he did when he was an employee of the company
10. There was nothing unfair in the Company considering the entire employment record in deciding the appropriate sanction.
11. Article 27 of the disciplinary code was applicable to the disciplinary proceeding in fact, it had been previously applied to the Aggrieved Worker when leniency was granted to him when he was charged with gross misconduct in May 2012. This was a dismissible offence for which he received a suspension instead of termination.
12. The Company exercised its discretion on at least one occasion to keep the Aggrieved Worker in its employment when he had committed a dismissible offence. The inference is to be drawn is that Article 27 of the Company handbook which formed part of Mr. Beadle's contract was known by the Aggrieved Worker.

THE TRIBUNAL'S RESPONSE:

49. In its deliberations, the Tribunal referred to Section 22 of the Labour Relations Code with deals with disciplinary procedures and Section 3 (4) of the Labour Relations and Industrial disputes Act which reads:

“ A failure on the part of any person to observe any provision of the Labour Relations code which is for the time being in operation shall not of itself render him liable to any proceedings; but in any proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or a Board to be relevant to any question arising in the proceedings shall be taken into account by the Tribunal or Board in determining that question.”

50. The Tribunal finds that the procedure that the Company followed which culminated in the termination of the Aggrieved Worker's employment was fair. The disciplinary procedure did not breach of the Labour Relations Code and was in conformity with the requirements of Section 22 of the Labour Relations Code.
51. The Tribunal therefore finds that the Aggrieved Worker was justifiably dismissed.



AWARD:

In accordance with Section 12 of the Labour Relations and Industrial Disputes Act the Tribunal awards that the termination of Trevor Beadle's employment was justifiable.

DATED THIS 30th DAY OF JANUARY 2020



Marsha Smith

Miss Marsha Smith

Chairman

Jacqueline Irons

Mrs. Jacqueline Irons, J.P.

Member

Chelsie Shellie-Vernon

Mrs. Chelsie Shellie-Vernon

Member

Witness:

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Mr. Gary Lediard

Secretary to the Division