

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 13/2016

SETTLEMENT OF DISPUTE

BETWEEN

KLE GROUP LTD

(Trading as Usain Bolt's Tracks and Records)

AND

Mr. JAMEL CAMPBELL

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, C.D., J.P. - CHAIRMAN

MR. LESLIE HALL - MEMBER

MR. DWIGHT NELSON, C.D., J.P. - MEMBER

NOVEMBER 18, 2016

IDT 13/2016

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**KLE GROUP LIMITED
(Trading as Usain Bolt's Tracks and Records)
(THE COMPANY)**

AND

**MR. JAMEL CAMPBELL
(THE AGGRIEVED)**

REFERENCE:

By letter dated March 22, 2016, the Honourable Minister of Labour and Social Security in accordance with Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, the industrial dispute outlined in the Terms of Reference stated hereunder:-

The Terms of Reference were as follows:

"To determine and settle the dispute between KLE Group Limited (trading as Usain Bolt's Tracks and Records) on the one hand and Mr. Jamel Campbell 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 and which dealt with the matter comprised:

Mr. Charles Jones, C.D., J.P.	-	Chairman
Mr. Leslie Hall	-	Member, Section 8(2) (c) (ii)
Mr. Dwight Nelson, C.D., J.P.	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Mr. Adrian Cotterell	-	Attorney- at- Law
Mr. Gavin Goffe	-	Attorney- at- Law
In attendance was:		
Mr. Nicholas Taylor	-	Consultant Franchise Officer

The **Aggrieved** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
In attendance was:		
Mr. Jamel Campbell	-	Aggrieved worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during four (4) sittings held between July 5, 2016 and September 1, 2016.

PARTIES TO THE DISPUTE:

KLE Group Limited (trading as Usain Bolt's Tracks and Records) is a private commercial entity, with registered office at shop # 6, 67 Constant Spring Road, Kingston 10. The Company's core business is the provision of services as a sports bar and restaurant.

Mr. Jamel Campbell was employed to the KLE Group.

BACKGROUND TO THE DISPUTE:

Mr. Campbell was employed to the KLE Group Limited in 2011 and promoted to the position of Cook 2 with effect from February 7, 2015. He was dismissed on August 13, 2015. Consequent on his dismissal Mr. Campbell reported the matter to the Ministry of Labour and Social Security and engaged the services of Mr. Howard Duncan to act on his behalf in seeking redress. Two meetings were held but the conciliation efforts by that Ministry failed and consequently the Honourable Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal for settlement.

THE COMPANY'S CASE:

The Company through its legal representative Mr. Adrian Cotterell of the law firm Myers, Fletchers & Gordon, Attorneys-at-Law, submitted that Mr. Campbell's performance was fraught with problems and that there were several disciplinary issues that arose which included insubordination and refusal to follow instructions.

He called as a witness, Mr. Nicholas Taylor, Consultant Franchise Officer to the KLE Group, and who was at the time General Manager of the Company. Mr. Taylor testified that Mr. Jamel Campbell was employed in 2011 as a Sanitation Worker and showed interest in the other areas of the business resulting in his upgrade to a Cook 2 position. Soon after attaining the Cook 2 position, his performance deteriorated. He began arriving at work late, for which punishment consisting of numerous verbal and written warnings was administered. His behaviour morphed into insubordination, refusal to carry out reasonable instructions, neglecting to clean work station and leaving work without permission.

Mr. Taylor testified that on August 12, 2015, Mr. Campbell was on the 3 p.m. to 11 p.m. shift working at the 'Big Food Station'. He was requested to work overtime. He refused and left the work area without informing anyone and without cleaning up his work station.

On August 13, 2015 a meeting was called to review Mr. Campbell's behaviour on the night of August 12, 2015. Mr. Campbell was invited to the meeting. Mr. Taylor said that those present at the meeting were himself, Mr. Kevin Robinson, Assistant General Manager, Mr. Lawrence Lowther, Executive Chef and Mr. Ramon Hoo, Sous Chef. The Company argued that at this meeting Mr. Campbell did not deny that he had left his work station without permission and without cleaning it as he was instructed to do.

The Company in presenting its case produced a number of Exhibits.

Exhibit # 8, the Company's Disciplinary Memorandum, indicated the breaches for which Mr. Campbell was charged arising out of his actions on August 12, 2016. These were:

- Insubordination
- Failure to clean and finish breaking down of the station after being instructed to do so
- Walking off the job without permission from the Department's Head

Exhibit # 8 also indicated that this was the fourth occasion that an offence was committed and the penalty was termination effective, August 13, 2015.

Mr. Taylor further testified that having read the charges Mr. Campbell had affixed his signature indicating that he was in agreement.

In closing arguments, Mr. Cotterell submitted that Mr. Campbell having agreed to the charges, and having signed the Disciplinary Memorandum, there was no further need for a disciplinary hearing.

His service was terminated and he was verbally told that he could appeal the decision if he wanted. There was no protest from Mr. Campbell. However, about a month later, Mr. Campbell requested gratuity payment from the Company.

CASE OF THE AGGRIEVED:

Mr. Howard Duncan, the Industrial Relations Consultant who represented Mr. Campbell, in his opening statement said that Mr. Campbell was an excellent worker who in the history of his employment to KLE Group Limited, was never asked to work overtime and he did not comply.

Mr. Duncan contended that:

- Mr. Jamel Campbell was terminated without the adherence of the Principles of Natural Justice and the provisions of the Labour Code.
- Mr. Campbell's right to a fair and proper disciplinary hearing was breached by the Company.
- Mr. Campbell was not provided with any evidence or report of any allegation of committal of wrong doings.
- He was not charged for any offence and allowed to be represented by a representative of choice and adequate opportunity to present his case.
- The right of an appeal was not provided.
- He had completed his responsibility of eight hours, even though he was not well and had advised his supervisor.

Mr. Campbell was the only witness called by Mr. Duncan. Mr. Campbell testified that on the night in question he was not feeling well but his supervisor refused to grant him permission to leave.

When asked by a Member of the Panel about his signing of the Disciplinary Memorandum (Exhibit # 8), Mr. Campbell said he had decided not to sign it, but when he was told that it was just another warning, he signed it. He also said that when he signed it he could not recall that there was any tick against the word termination.

In closing, Mr. Duncan argued that Mr. Taylor, the Company's sole witness, was not present at any of the incidents in which the Company had accused Mr. Campbell, and therefore should not be believed. He further stated that to date Mr. Jamel Campbell had not received a termination letter and that what he had signed at the meeting of August 13, 2016, was under duress.

Mr. Duncan closed the case of the Aggrieved, by asking the Tribunal to either reinstate Mr. Campbell or pay him the equivalent of three years' salary.

THE TRIBUNAL'S DELIBERATIONS:

The Tribunal in its deliberations gave careful consideration to the evidence presented and asked itself whether the Company had acted fairly in the termination of Mr. Campbell's employment. Members concluded from the evidence presented through the number of 'Disciplinary Memoranda' that Mr. Campbell's performance and behaviour took a gradual downturn and culminated with the incident of August 12, 2015.

From his experience of the Company's disciplinary process, Mr. Campbell should have known that by signing the Disciplinary Memorandum, he was accepting the charges and sanctions applied. Therefore, in his signing of 'Disciplinary Memorandum' of August 13, 2013, he was in effect accepting the penalty. Members agreed that Mr. Campbell's dismissal was justifiable.

AWARD:

The Tribunal's Award is that the termination of Mr. Jamel Campbell's employment was justifiable.

DATED THIS 18th DAY OF NOVEMBER 2016.



Mr. Charles Jones, C.D., J.P.

Chairman

Mr. Leslie Hall

Member

Mr. Dwight Nelson, C.D., J.P.

Member

WITNESS:

Nicola Smith Marriott (Mrs.)

Secretary to the Division