

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 10/2015

SETTLEMENT OF DISPUTE
BETWEEN
GROG SHOPPE RESTAURANT
AND
MISS PATRICIA POWELL

AND THE

AWARD

I.D.T. DIVISION

MR. DONOVAN HUNTER	-	CHAIRMAN
MR. TREVOR GRAHAM, J.P.	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

FEBRUARY 2, 2016

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**GROG SHOPPE RESTAURANT
(THE COMPANY)**

AND

**MISS PATRICIA POWELL
(THE DISMISSED WORKER)**

REFERENCE:

By letter dated April 29, 2015, 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, in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

"To determine and settle the dispute between Miss Patricia Powell on the one hand and the Grog Shoppe Restaurant on the other hand over the termination of her 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. Donovan Hunter | - | Chairman |
| Mr. Trevor Graham, J.P. | - | Member, Section 8(2) (c) (ii) |
| Mr. Clinton Lewis | - | Member, Section 8(2) (c) (iii) |

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- | | | |
|--------------------------|---|-------------------|
| Mr. Lorenzo Eccleston | - | Attorney-at-Law |
| Mr. Tarquinio Caldarelli | - | Managing Director |

The **dismissed worker**, Miss Patricia Powell was represented by:

- | | | |
|-------------------|---|---------------------------------|
| Mr. Howard Duncan | - | Industrial Relations Consultant |
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In attendance:

- | | | |
|----------------------|---|----------------------|
| Miss Patricia Powell | - | the Dismissed Worker |
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during eight (8) sittings held between August 10, 2015 and November 26, 2015.

BACKGROUND TO THE DISPUTE:

This matter arose from the decision by Mr. Tarquinio Caldarelli, Managing Director, the Grog Shoppe Restaurant, 26 Hope Road, Devon House to terminate the contract of service of Miss Patricia Powell by letter dated August 23, 2014. This event occurred following alleged gross misconduct on the part of the said Miss Patricia Powell. The reason for Miss Powell's dismissal is featured in her termination letter.

"... Further to a series of admitted mistakes in the purchasing of supplies and staff scheduling, the discovering of miscalculations in the staff working hours resulting in a considerable lost of company money, has eroded my confidence in your ability to execute your job effectively..."

CASE FOR GROG SHOPPE RESTAURANT:

A summary of the issues of contention are as follows:

(a) Purchasing of Supplies

Miss Powell was the Purchasing Manager, a major part of her responsibility was to make sure that the supplies of food and beverages were ordered on time to avoid running out of essential kitchen and bar items. Dozens of times she failed to do so and when this was pointed out to her by Mr. Caldarelli she invariably said sorry, it was her fault.

(b) Staff Scheduling

Being responsible for the scheduling of staff for shift work, Miss Powell made frequent errors. This resulted in the restaurant being over staffed or under-staffed with obvious financial consequences for the restaurant. When confronted at times she would argue to avoid responsibility, at other times she would admit the mistake and said she was sorry.

(c) Miscalculation of staff hours

In doing the payroll, Miss Powell had to calculate the number of working hours for two (2) weeks period for all hourly paid staff. She would then report to Mr. Caldarelli's office and they would both make the payroll based on their calculation. In one instant he noticed that two members of the kitchen staff had an abnormally high number of working hours. Upon calculating the payroll, Mr. Calderalli realized that when an employee is on a split shift; work time is from 11:00 a.m. to 3:00 p.m. clock out and clock in again at 6:00 p.m. to 9:00 p.m. The two kitchen employees were in the habit of not clocking out at 3:00 p.m. resulting in three (3) extra hours per day. Further checks revealed that they had been paid six hours per week each, for five (5) months.

CASE FOR THE AGGRIEVED:

Miss Patricia Powell was employed to the Grog Shoppe Restaurant as a Purchasing Manager. By letter dated August 23, 2014 she was advised by Mr. Tarquinio Caldarelli, Managing Director that effective immediately her services were terminated for admitted mistakes in the purchasing of supplies, staff scheduling and the discovering

of miscalculations in the staff working hours resulting in a considerable loss to the company. These infractions have eroded the management confidence in Miss Powell's ability to execute her job effectively.

Miss Powell was never charged for any offense nor was she afforded a fair and proper disciplinary hearing and the right of representation prior to her termination. The Consultant representing the aggrieved asked that the Tribunal find that Miss Powell was terminated unfairly and unjustifiable and that she be reinstated in her job without any loss of pay.

TRIBUNAL'S RESPONSE:

The termination of Miss Patricia Powell was defective, as it failed to recognize required procedures when dealing with disciplinary matters. Before going into the subject matter of Procedures as it relates to disciplinary matter, Collins Dictionary and Thesaurus defines **procedure** as:

“a way of doing something especially the correct or usual one.”

To bring clarity to the matter the Tribunal will seek guidance from the following authorities:

Halsbury on Employment page 483 also see IDT Award 16/2007.

Procedural Fairness:

“The overall test of fairness includes the concept of procedural fairness so that a dismissal may be unfair because an unfair procedure was adopted, even though an employer had a sound substantive reason for his dismissal. There is no statutory obligation on employer to have a formal disciplinary procedure but the existence of such a procedure is highly desirable and in any event certain minimum standards are likely to be expected of the employer even in the absence of a written procedure. Although the rules of natural justice do not apply directly to form an independent ground on which a decision to dismiss may be attached, a breach may be an important matter when an employment tribunal is considering the overall fairness of a dismissal.

A breach in procedure is merely one of the factors to be taken into account, but the House of Lords has placed renewed emphasis on procedural fairness so that it is likely that breach of procedure will make a dismissal unfair and the former rule that, if the breach of procedure in fact made no difference, then the actual dismissal could be held to have been fair has been disapproved."

A procedure is employed to process a particular task and when not applied as required the process in achieving that task can be compromised. In this case a disciplinary procedure is expected to be followed in order to achieve a fair outcome and to attempt to carry out a process outside the required procedure will compromise the outcome.

The importance of the procedure is enshrined in the Labour Relations and Industrial Disputes Act (LRIDA). Section 3(4) of the Labour Relations and Industrial Disputes Act mandates the Tribunal to refer to the Labour Relations Code in the settlement of disputes:

"A failure on the part of any person to observe any provision of a 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."

Section 22 of the Labour Relations Code refers to Disciplinary Procedures:

"(1) Disciplinary Procedures should be agreed on between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:

- (a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;*
- (b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;*

- (c) *give the worker the opportunity to state his case and the right to be accompanied by his representatives;*
- (d) *provide for a right of appeal, wherever practicable, to a level of management not previously involved;*
- (e) *be simple and rapid in operation."*

FINDINGS OF FACTS:

There were no established procedures in dealing with disciplinary matters.

Matters that may have required disciplinary action were transformed into verbal discussion; nothing was put in writing for future references.

Mr. Caldarelli response to Mr. Duncan's question makes the point:

Questions: Now in terms of Miss Powell, your evidence is that Miss Powell did not make some purchases in a timely manner. Did you write her any letter to indicate such?

Ans: No I didn't, Miss Powell and I it was always a verbal communication. All the time we discuss things, I always just call her in office or have a meeting with the rest of the staff and we always have verbal communication.

There was no date and time when these alleged infractions were committed by Miss Powell. There were no summaries of any meetings or discussion that may have taken place in regards to the disciplinary issues that could have led to the implementation of disciplinary measures.

Miss Rahcheel Pingue, Hostess at the Grog Shoppe Restaurant in evidence gave a description as to how disciplinary meetings were conducted, but this facility was never offered to Miss Powell.

The Tribunal Finds that Miss Powell was not accused of anything prior to her termination (see Section 22 (1)(b) Disciplinary Procedures), neither was she given the

opportunity to state her case and the right to be accompanied by her representative (See (1)(c) above).

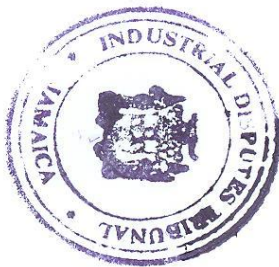
The Tribunal has concluded that Miss Patricia Powell was unjustifiably dismissed. The worker has expressed the wish to be reinstated but having regard to all the circumstances, the Tribunal will not order reinstatement.

AWARD

In keeping with the provisions of Section 12(5)(c) of the Labour Relations and Industrial Disputes Act, the Tribunal awards that:

- (i) Miss Patricia Powell be compensated with six (6) months salary.

DATED THIS 2nd DAY OF FEBRUARY 2016



Witness:


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Royette Creary
Secretary to the Division


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Donovan Hunter
Chairman


.....
Trevor Graham
Member


.....
Clinton Lewis
Member