

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 3/2015

SETTLEMENT OF DISPUTE

BETWEEN

RANGER PROTECTION & SECURITY COMPANY LIMITED

AND

MR. COURTNEY WILSON

AND THE

AWARD

I.D.T. DIVISION

MR. DONOVAN HUNTER - CHAIRMAN

MR. TREVOR GRAHAM, JP. - MEMBER

MR. CLINTON LEWIS - MEMBER

NOVEMBER 9, 2016

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**RANGER PROTECTION & SECURITY COMPANY LIMITED
(THE COMPANY)**

AND

**MR. COURTNEY WILSON
(AGGRIEVED WORKER)**

REFERENCE:

By letter dated January 15, 2015, the Honourable Minister of Labour and Social Security in accordance with Section 11(1) 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 Ranger Protection and Security Company Limited on the one hand and Courtney Wilson 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. 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:

- | | | |
|--------------------|---|---------------------|
| Mr. Zavia Mayne | - | Attorney-at-Law by: |
| Ms. Tashell Powell | - | Attorney-at-Law |

The **Aggrieved worker** was represented by:

- | | | |
|-------------------|---|---------------------------------|
| Mr. Howard Duncan | - | Industrial Relations Consultant |
|-------------------|---|---------------------------------|

In attendance:

- | | | |
|---------------------|---|---------------|
| Mr. Courtney Wilson | - | the Aggrieved |
|---------------------|---|---------------|

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during sixteen (16) sittings held between April 7, 2015 and September 9, 2016.

BACKGROUND:

Ranger Protection and Security Company Limited (hereinafter referred to as the Company) is a registered security company incorporated under the laws of Jamaica with its registered office located at 24 South Camp Road, Kingston 4 in the parish of Saint Andrew. They provide various security services to include security planning, training, manned guarding, mobile escorts and patrol amongst other service. They employ hundreds of security guards island wide.

Mr. Courtney Wilson was employed to Ranger Protection and Security Company Limited as a Sub-contractor but was subsequently terminated due to an incident that took place on April 29, 2013 between his supervisor and himself.

CASE FOR THE COMPANY:

On April 29, 2013, Mr. Courtney Wilson a Security Guard employed as a Sub-contractor was found to have abandoned his post and further caught by his supervisor Mr. Elkhiah Jones to be unalert at his post. Mr. Wilson's firearm was also left unattended in the open on a table. When challenged by his supervisor to give an account for his negligence, Mr. Wilson responded by unleashing a series of expletives and fowl language. A report was lodged by his supervisor, Mr. Jones of his conduct on April 29, 2013.

On or about May 1, 2013, a hearing was held into the complaint lodged by Mr. Jones against Mr. Wilson. At the time of the hearing both the complainant, Mr. Jones and the accused, Mr. Wilson and the relevant witnesses were all in attendance.

Mr. Wilson during the hearing admitted to the charges of gross misconduct, being in breach of the company's policies and leaving his firearm unprotected. Having heard all the facts, material relevant to the incident, the company exercised its right to terminate the employment of Mr. Wilson, pursuant to clause 3.6 of his employment contract. Section 3.6 of Mr. Wilson's employment contract states:

"if the Contractor shall fail to perform any of his/her duties to the satisfaction of the Contracting Company or to contravene the CODE OF CONDUCT, CODE OF OPERATIONS AND OR STANDING ORDERS of the Contracting Company or the Client the Contracting Company shall have right to terminate this Agreement without notice."

CASE FOR MR. COURTNEY WILSON:

Mr. Courtney Wilson was employed to Ranger Protection and Security Company Limited as a security officer and at the time of his termination was assigned duties at Nestle Jamaica Limited, Bog Walk, St Catherine.

On Monday, April 29, 2013 while at work Mr. Wilson's supervisor indicated to him that if he was not prepared to take up location at the gate he should go home. He began to hand over the gun where verbal exchanges were made by both Mr. Jones and himself.

Mr. Wilson went to the doctor on April 30, 2013 where he received a sick leave certificate for a period of five days. He was later advised by Mr. Ralston Stewart, Location Manager that a meeting was arranged for the 1st May 2013. He was not advised of the purpose of the meeting neither was he advised of the right of representation nor the charges that were laid against him. This therefore breaches his right to a fair hearing.

On May 1, 2013 the services of Mr. Wilson was terminated verbally by Mr. Eric Barrett, Assistant Regional Manager of Ranger Protection and Security Company Limited.

FINDINGS OF FACTS:

Ranger refers to its security operatives as subcontractors. This creates a relationship of contract for service. Mr. Courtney Wilson, the aggrieved, disagrees and considers himself in a relationship with Ranger Security as contract of service which creates an employee and employer relationship. In order to identify the status of the relationship the Tribunal will refer to the Section 2 of the Labour Relations and Industrial Disputes Act, 1975. The Act defines a worker (employee):

"worker" means an individual who has entered into or works or normally works (or where the employment has ceased, worked) under a contract, however described, in circumstances where that individual works under the direction, supervision and control of the employer regarding hours of work, nature of work, management of discipline and such other conditions as are similar to those which apply to an employee."

Based on the Contractual Agreement between Ranger Protection and Security Company Limited and Mr. Courtney Wilson (Exhibit 7), there are features in the relationship between the parties that requires control by the employer over the employee, all of which reflects contract of service between employer and an employee. The following are features of Mr. Wilson's contractual agreement:

- sub-contractor agrees to comply with all reasonable directions and instructions
- at all times the sub-contractor shall professionally, diligently and thoroughly provide security services at such times and at such places as the contracting company shall from time to time require
- the contracting company will provide the sub-contractor with uniforms, life insurance coverage, health insurance and liability insurance
- the evidence also shows that disciplinary measures are taken if an infraction of the company's rules has been committed.

In reference to the above, a contract of service existed between Ranger Protection and Security Company Limited and Mr. Courtney Wilson. This creates an employer employee relationship between the parties and is supported by the definition of a worker as stated in the Labour Relations and Industrial Disputes Act.

The Incident:

There was no letter of termination that would indicate the reason for the dismissal of Mr. Courtney Wilson. However, the evidence of Mr. Elkhiah Jones clarified what were the charges he made against Mr. Wilson. In cross examination by Mr. Duncan, Mr. Jones responded:

Ques: let me take you back to your charge sheet of April 29, 2013. What did you charge Mr. Wilson for?

Ans: for being insubordinate and abandoning his post

On the 29th April 2013, Mr. Elkhiah Jones, Location Supervisor for Ranger Security visited the Bybrooks main gate at Nestle Jamaica Limited and observed Miss Angela Gordon one of two security officers manning the gate when she was in fact assigned to the desk in the guard house. Mr. Jones also observed Mr. Courtney Wilson the other security officer who was assigned to the gate sitting in the guardhouse with his shoes off. Mr. Jones by his own evidence instructed Mr. Wilson saying "*if you are not going to work it is best you go home.*" Mr. Jones contended that Mr. Wilson responded to him with a series of expletives whilst he simultaneously took his gun from his waist unloaded it and threw both the gun and bullets on the desk.

There are two points to be made, When Mr. Wilson unholstered his gun he was responding to the instructions of Mr. Jones when he told him that “ *if you are not going to do the work it is best you go home.* ” Mr. Wilson opted to go home, hence, he attempted to hand over the gun to Mr. Jones and he refused to take it. When asked by Mr. Barrett in the meeting of May 1, 2013 if he had given the firearm to Mr. Jones, Mr. Wilson’s response was “ *mi did a gi him and him no tek it.* ” Mr. Wilson subsequently went through the Bybrook gate and took the gun over to the Milo compound and placed it in a draw. He was not seen for the rest of the shift.

Did Courtney Wilson abandon his post?

Mr. Jones concluded that Mr. Wilson had abandoned his post when he went through the Bybrook gate. The question is, how can Mr. Wilson be accused of abandoning his post when his supervisor said to him ‘you either do the work or go home’ and he opted to go home, Mr. Wilson was responding to an instruction. He did not abandon his post.

The matter of insubordination

The company contends that Mr. Wilson responded to Mr. Jones instruction with a series of expletives to which Mr. Wilson has denied. The evidence presented by the company in support of the charge of insubordination is inconclusive.

Mr. Barrett gave evidence that he made his decision to dismiss Mr. Wilson based on reports from the following persons:

- Ms. Angela Gordon - Security Guard
- Ms. L. Wallace - Duty Officer
- Ms. Veda Neil - Security Officer
- Mr. Elkih Jones - Location Supervisor

With the exception of Mr. Jones who gave evidence, they were all potential witnesses which may have supported the company’s contention of insubordination at the Tribunal, but for whatever reason they did not call any of these person.

The matter of Procedures

It is the contention of the company that the dismissal of Mr. Wilson was justified having taken the decision based on the evidence with due adherence to the required procedure that would support a fair hearing.

The aggrieved on the other hand has seen his termination as being unfair under the circumstances and more so he was denied the right to a fair and proper hearing.

The Tribunal will seek guidance from the following authorities:

Halsbury on Employment at page 483, see also 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 the employer had a sound substantive reason for the dismissal. There is no statutory obligation on an 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.

Ultimately, however, the overall fairness of the dismissal, including any procedural matter, remains a question of facts for the employment Tribunal."

Paragraph 22 of the Labour Relations Code states:

1. *'Disciplinary Procedures should be agreed 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) *.....*
 - 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) *.....'*

Section 3 of the Labour Relations and Industrial Dispute Act 1975 gives full recognition to the Code. Subsection 4 states as follows:-

*"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."*

Halsbury emphasized the importance of adhering to a required procedure in processing disciplinary matters so important is this approach that an omission in not following the procedure can end up having a guilty employee being unfairly dismissed.

Section 22 of the Labour Relations Code specifically lay out the basic procedure that the Tribunal is required to follow as stated under Section 3 (4) of the Labour Relations & Industrial Disputes Act. The hearing held on May 1, 2013 to deal with the charges against Mr. Wilson was defective, several aspects of the procedures were not properly recognized.

Mr. Wilson was not informed of the charges in writing that would be made against him prior to the hearing nor was he advised that he had the right to be accompanied by his representative. In fact, Mr. Barrett in evidence asked Mr. Wilson *"if he had any body he had taken with him and if he was aware he was on a disciplinary charge."*

Mr. Barrett's question to Mr. Wilson would have been better served, had it been an advise to Mr. Wilson prior to the hearing. Mr. Barrett in evidence said that the decision to dismiss Mr. Wilson was taken on the basis of the reports he received from the following persons:

Ms. Angela Gordon	-	Security Guard
Ms. L. Wallace	-	Duty Officer
Ms. Veda Neil	-	Security officer
Mr. Elkhiah Jones	-	Location Supervisor.

Mr. Wilson was not given an opportunity to face any of his accusers. In fact, none of those who contributed reports on the incident attended the hearing with the exception of Mr. Jones.

The time between the incident on April 29, 2013 and the meeting on May 1, 2013 was approximately 24 hours, it is unreasonable to have Mr. Wilson prepared his defense in such a short time had he thought it appropriate to do so.

The failure to follow the proper procedure in conducting the disciplinary hearing resulted in Mr. Courtney Wilson being denied a fair and proper hearing.

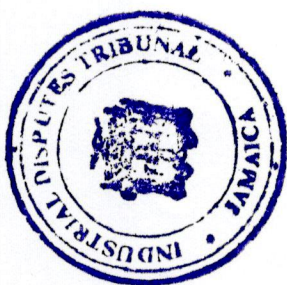
FINDINGS:

The Tribunal finds that Mr. Courtney Wilson was unjustifiably dismissed.

AWARD:

The Tribunal Awards that Mr. Wilson be compensated by the payment of seventy-eight (78) weeks basic pay.

DATED THIS 9th DAY OF NOVEMBER 2016



Donovan Hunter

Mr. Donovan Hunter
Chairman

Trevor Graham

Mr. Trevor Graham, JP.
Member

Witness:

Clinton Lewis

Mr. Clinton Lewis
Member

R. Creary

Royette Creary
Secretary to the Division