

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 12/2017

SETTLEMENT OF DISPUTE
BETWEEN
RICHARD ALEXANDER AND COMPANY LIMITED
AND
MR. GLENMORE SMITH
AND THE
AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	CHAIRMAN
MR. ERROL BECKFORD	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

JANUARY 10 , 2020



IDT 12/2017

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**RICHARD ALEXANDER AND COMPANY LIMITED
(THE COMPANY)**

AND

**MR. GLENMORE SMITH
(THE AGGRIEVED)**



REFERENCE

By letter dated March 8, 2017 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 the matter contained herein for settlement by the Industrial Disputes Tribunal.

The Terms of Reference were as follows:

"To determine and settle the dispute between Richard Alexander and Company Limited on the one hand and Mr. Glenmore Smith 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, CD, JP	-	Chairman
Mr. Errol Beckford	-	Member, Section 8(2) (c) (ii)
Mr. D Trevor McNish	-	Member, Section 8(2) (c) (iii)

Mr. D Trevor McNish, Member of the Division hearing this Dispute died on July 25, 2019, after the hearing of the matter was completed but before the Award was finalized. The parties agreed in writing for the proceedings to continue with Mr. Clinton Lewis being appointed Member of the Division in accordance with Section 8(4) of the Labour Relations and Industrial Disputes Act which provides as follows:

*"8(4) Where three members of the Tribunal constitute a division thereof and any one of those members dies or is incapacitated or ceases to be a member thereof for any other reason after the division begins to deal with the industrial dispute in relation to which it was constituted but before it has made its award, another person shall be selected in accordance with the provisions of paragraph (c) of subsection (2) to fill the vacancy; thereafter the proceedings of the division shall be begun *de novo* unless all the parties to the dispute agree in writing that those proceedings may be continued as if they had not been interrupted by reason of such death or incapacity or cessation."*

REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

Mr. Emile Leiba	-	Attorney-at-Law
Mr. Andre Marriott-Blake	-	Attorney-at-Law

In attendance was:

Mrs. Carole Williams	-	Director of the Company
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The **Aggrieved** was represented by:

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

Mr. Glenmore Smith	-	The Aggrieved Worker
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SUBMISSIONS AND SITTINGS

Briefs were submitted by both parties and oral submissions made during four (4) sittings held between October 3, 2017 and June 6, 2019.

BACKGROUND TO THE DISPUTE:

Richard Alexander and Company Limited (the Company) operates a shop (the Green Shop) and bakery in May Pen, Clarendon.

Mr. Glenmore Smith was employed to the Green Shop in the capacity of Kitchen Staff/Delivery Man. His services were terminated on March 21, 2015. Mr. Smith, in an effort to gain redress, engaged the services of Mr. Howard Duncan, Industrial Relations Consultant, to act on his behalf. Mr. Duncan submitted a letter to the Company appealing the termination of Mr. Smith's employment and also reported the matter to the Ministry of Labour and Social Security.

Meetings at the Ministry failed to arrive at a settlement and consequently the Honourable Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal for determination and settlement in accordance with section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act.

THE COMPANY'S CASE:

Mr. Emile Leiba, Attorney-at-Law representing the Company, in his opening address, submitted as follows:

- Mr. Smith was first employed to the Company during the period 1996-2000.
- Mrs. Carole Williams, a Director of the Company, was offered a contract to operate the canteen at Clarendon College and Mr. Smith then worked at the canteen up until 2010, when the contract to operate the canteen expired.
- Mr. Smith was then employed to the Green Shop and bakery until March 21, 2015.

On Thursday March 19, 2015, Mr. Smith prepared patty meat for 600 patties, which were baked on March 21, 2015. After sale of the patties commenced and following a complaint by a customer, it was discovered that the patty meat was not seasoned, which made them unpalatable and not fit for sale.

This resulted in "irreparable" damage to the reputation of the Green Shop and caused the Company a financial loss of Eighty-four Thousand Dollars (\$84,000).

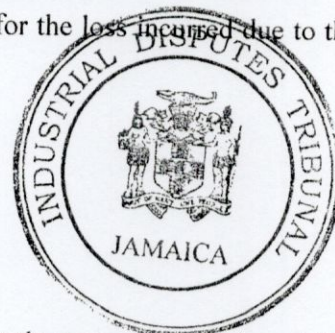
Mr. Smith, when called to a meeting to discuss the incident, admitted that he was at fault and that he had not put the seasoning in the patty meat.

Mr. Leiba stated also that he accepted that the strict letter of the Labour Relations Code was not followed by the Company in the dismissal of Mr. Smith. Mr. Leiba called Mrs. Carole Williams, Director, as a witness.

Mrs. Williams testified that at the time of the incident, her daughter Miss Rachel Williams, was managing the business but was now attending college overseas. She said the business employed sixteen (16) persons. Mr. Smith was required to cook meat for the making of patties, to sell in the shop and run errands.

She further testified that at the time of the incident, her daughter had called Mr. Smith and asked him for an explanation, and he was given the option to continue working and pay for the loss incurred due to the withdrawal of the unpalatable patties, but he refused.

He was then dismissed due to negligence.



Mrs. Williams, on cross examination by Mr. Howard Duncan, admitted that there was nothing in writing in the letter of dismissal to indicate that Mr. Smith could continue working provided he paid for the loss incurred. She admitted also that Six Thousand and Ninety-One Dollars and Twenty-one Cents (\$6,091.21) was retained from his pay to assist in offsetting the losses. She also testified that the appeal hearing requested by Mr. Duncan was not held.

She disagreed with Mr. Duncan's suggestion that Mr. Smith had never left out seasoning from the patty meat before, and that he was not the person who cooked the meat for the patty on the day in question.

In closing, Mr. Leiba submitted that the Tribunal should take a fulsome account of the evidence presented giving due regard to the following:

"In light of the foregoing and in the circumstances where the evidence supports a finding that the employee does not come with "clean hands", the Tribunal "... must take into consideration [the employee's] contributory faults to the actions of the Company" in keeping with established precedent of this Honourable Tribunal.

The Green Shop operated under the view that Mr. Smith's admission of conduct constituted "gross negligence", and a failure "to carry out reasonable work-related instructions and perform at a minimum acceptable level" contrary to its Operation Standards (see Exhibit #2), in respect of his kitchen staff duties, was such as to allow for it to terminate his employment, in accordance with the terms of his contract.

It is the Green Shop's entreaty that due regard should be had, by the Honourable Tribunal, to the overall tapestry of the termination, should it deem an award appropriate in the circumstances.

Additionally, that fact that the Green Shop is but a small family business with 16 persons (and dependent families) under its employ, in circumstances where the financial standing of said entity, as at September 28, 2017, is JMD 1,243,876.08 in deficit and any further monetary payments are likely to result in the viability of the business being threatened, should be factors strongly considered by the Honourable Tribunal as it arrives at its decision.

In summary, it is submitted that in keeping with established precedents of this Honourable Tribunal (See IDT 19/2012: Bellindo Iron Works Limited and Mawugbo Rayson and IDT 13/2016 KLE Group Limited Ltd T/a Usain Bolt's Tracks and Records and Mr. Jamel Campbell) the undergirding circumstances of the termination, Mr. Smith's contributory faults to the actions of the business, and the potential social and economic consequences of an award on the viability of the business and fate of its current employees, should act as a parameter considered by the Honourable Tribunal in coming to a fair and just finding.





We therefore submit that no monetary sum should be awarded to Mr. Smith, or if the Tribunal is minded to make an award, that the sum awarded should be nominal. Furthermore, it should be noted that there exists another matter before the Honourable Tribunal, in similar respects, involving the Green Shop and another former employee."

Mr. Leiba also drew the Tribunal's attention to Exhibit 4 which was the Green Shop's financial statement dated December 31, 2016, and to a letter from the Company's accountant indicating that the Company as at September 18, 2017, was in deficit of One Million Two Hundred and Forty-Three Thousand Eight Hundred and Seventy-Six Dollars and Eight Cents.

CASE FOR THE AGGRIEVED

Mr. Howard Duncan, Industrial Relations Consultant who represented Mr. Smith, contended *inter alia* that:

1. Mr. Smith was terminated without a fair and proper disciplinary hearing; in fact he was terminated summarily.
2. Mr. Smith's right to a fair and proper disciplinary hearing was breached by the Company in not providing him with the specifics surrounding the termination.
3. An appeal was requested but not granted.
4. Ms. Rachel Williams was the accuser and the decision maker – which indicated bias
5. Mr. Smith was told to pay for the patties and payment had commenced. He had been disciplined twice for the same offence.
6. There was total violation of the Labour Relations Code and the Principles of Natural Justice.

Mr. Duncan also requested the Tribunal to find that Mr. Smith was indeed unfairly and unjustifiably terminated and should be awarded reinstatement and payment for the period between the dates of termination and the Award.

Mr. Duncan called Mr. Smith as a witness to testify on his own behalf.

Mr. Smith testified that he was employed as a Driver and that he did not cook the meat for the patty on March 19, 2015. He stated that on that day he was on delivery duty. On March 21, 2015, on his way from church, he was called by Miss Rachel Williams, shown the patties and was invited to the office where he

received a letter of dismissal, that was already prepared. He further testified that he was not given a chance to explain anything.

On cross examination by Mr. Leiba, Mr. Smith testified that during the nineties, he worked between Clarendon College and Richard Alexander and Company Limited. He transported goods for the Company and assisted in the Tuck Shop at Clarendon College until 2010 when the contract ended. He testified that since 2010 he did duties at the Green Shop and that he had no specific day to cook patty meat and when he did, it was always with someone else. During the week of the incident he did not assist in cooking patty meat.

In response to a question regarding employment since his dismissal, he testified that he was given jobs to help out at Kings Chemical now and then and only received the Company shirt because of this status.

Mr. Duncan, in closing, submitted that Mr. Smith's termination was not fairly executed and that there was a case for bias as Miss Rachel Williams accused him and also terminated his services.

He stated that the Company had breached the Labour Relations Code and the Rules of Natural Justice.

In concluding, he stated that Mr. Smith should be reinstated without any loss of pay.

TRIBUNAL'S DELIBERATION

The Tribunal, in its deliberation, carefully examined the evidence presented and noted that Mr. Leiba, Attorney-at-Law representing the Company, had admitted that *".... the strict letter of the Code was not followed"*.

The Tribunal noted the incident that led to Mr. Smith's dismissal and the conflicting evidence as to whether he was responsible for preparing the patty meat on the day in question. Mrs. Williams' evidence was that when Mr. Smith was called to a meeting to discuss the incident, he admitted that he was at fault. The Tribunal also noted that Mr. Duncan had contended that Mr. Smith was told to pay for the patties and had commenced payment. However, in Mr. Smith's testimony he stated that he had not prepared patty meat on any of the days during the week that the incident had occurred. The Tribunal therefore had reason to doubt the veracity of Mr. Smith's evidence in this regard. This however, did not alter the fact that due process was not observed by the Company.

The Tribunal noted that Miss Rachel Williams, who was managing the business at the time of the incident and who terminated the services of Mr. Smith, was out of the island at the time of the hearing. In this regard, the Tribunal took into consideration the fact that Mrs. Carole Williams, a Director of the



Company, during cross examination, in answer to certain questions asked, stated "... I can't answer that Mr. Duncan. As I said, my daughter was the one who did everything. She is the Manager and I really cannot answer why."

The Tribunal gave consideration to the number of years that Mr. Smith was employed and noted the Company's statement that he had commenced working at The Green Shop in 1996 in the capacity of Kitchen Staff/Delivery Man.

Sometime in 2000, Mrs. Carole Williams, a Director of Richard Alexander and Company Limited was granted a contract to operate a canteen at Clarendon College. She engaged the services of Mr. Smith to work in the canteen in the position of Kitchen staff/Delivery Man. The contract ended in 2010.

Mr. Smith was again employed to The Green Shop in 2010. In his evidence, he stated that during the period 2000 to 2010 while being employed to Mrs. Williams in the canteen, he also transported goods for Richard Alexander and Company Limited.

The Tribunal examined a Contract of Service signed by Mr. Smith to perform the duties of Kitchen Staff/Delivery Man with a commencing date of 2011. This he signed on February 20, 2015, at the time when Miss Rachel Williams assumed the position of Manager of The Green Shop, and apparently decided to put in place employment records for the staff. Members concluded that this did not accurately portray the effective date of Mr. Smith's employment.

It was Mr. Smith's contention that he was continuously employed for nineteen (19) years and the Tribunal was not presented with any evidence to suggest that there was any break in his service between the periods spent in The Green Shop and in the Canteen.

FINDINGS

The Tribunal agreed that the procedures engaged by the Company in terminating the services of Mr. Smith was in breach of the Labour Relations and Industrial Disputes Act and the Labour Relations Code, and finds that the manner in which Mr. Glenmore Smith was dismissed by the Company rendered this dismissal unjustifiable.



AWARD

In all the circumstances of this matter and taking into consideration the welfare of all the parties concerned, the Tribunal has decided not to order reinstatement as requested.

The Tribunal's Award is for Mr. Glenmore Smith to be compensated in the amount of One Hundred and Sixty Thousand Dollars (\$160,000.00) for his dismissal, which has been deemed by the Tribunal, to be unjustifiable.

DATED THIS 10th DAY OF JANUARY 2020.



Mr. Charles Jones, CD, JP
Member

Mr. Errol Beckford
Member

Mr. Clinton Lewis
Member

Witness:

Nicola Smith Marriott (Mrs.)
Secretary to the Division