

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 23/2018

SETTLEMENT OF DISPUTE

BETWEEN

SUCCESSOR'S SUPERMARKET AND WHOLESALE

AND

MISS CURLENE STEWART

AWARD

I.D.T. DIVISION

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

JANUARY 30, 2020



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IDT 23/2018

INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
SUCCESSOR'S SUPERMARKET AND WHOLESALE
(THE COMPANY)
AND
MISS CURLENE STEWART
(THE AGGRIEVED)

REFERENCE:

By letter dated June 1, 2018, 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 Successor's Supermarket and Wholesale on the one hand and Miss Curlene Stewart 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:

Miss Marsha Smith	-	Chairman
Mrs. Jacqueline Irons J.P.	-	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. Liu Min Chong	-	Operator and Manager
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The **Aggrieved Worker** was represented by:

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

Miss Curlene Stewart	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during three (3) sittings held between March 18, 2019 and May 8, 2019.

BACKGROUND TO DISPUTE:

Successor's Supermarket and Wholesale, herein after called "the Company" is a supermarket and wholesale situated at 8 Great George's Street, Savanna-La-Mar in the parish of Westmoreland.

Miss Curlene Stewart, hereinafter called "the Aggrieved Worker" was employed to the Company in 2009 as a Cashier. On February 18, 2014, the Aggrieved Worker received a letter of even date, terminating her employment. The letter of termination is set out below:

"SUCCESSOR'S SUPERMARKET & WHOLESALE

8 Great George's Street, Savanna La Mar P.O. Westmoreland, Jamaica W.I.

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February 18, 2014

*Ms. Curlene Stewart
George's Plain
Westmoreland.*

Dear Ms. Stewart:

We regret to inform you that your employment with Successor's Supermarket & Wholesale is hereby terminated immediately.

You had in your possession a key that was illegally copied on February 15, 2014. However, when you were pursued about the matter, you lied that you had never seen such key. Due to the fact, that the key was illegally copied and you denied ever seeing it, it is a form of conspiracy.

This sort of action is not acceptable under any circumstances and we have lost trust in you being our Cashier. We therefore, are providing you the following:

Work week's pay due up to date \$ 3,185.00

Two week's notice pay \$13,000.00

Vacation pay to date \$ 1,300.00

\$17,485.00

Sincerely,

Liu Min Chong

I, Curlene Stewart have received outstanding owing to me and acknowledged this letter.

C. Stewart

Signed



18/2/14

Dated"

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The Aggrieved Worker referred the matter of the termination of her employment to the Ministry of Labour and Social Security. The Minister referred the matter to the Industrial Disputes Tribunal for settlement and determination.



THE COMPANY'S CASE:

1. The Company called three (3) witnesses. The first witness was Mr. Liu Min Chong. In his examination in chief he testified that he was the operator and manager of the Company. The Aggrieved Worker was employed as a cashier to the Company. He found out that the Aggrieved Worker lied and did something outside the company's rules. She hooked up with someone and copied the key for the main door and the bathroom door to the premises. When he found out that the Aggrieved Worker and someone named Jason had cut the key to the bathroom and front door, he had a meeting with her for one hour. She was guilty and after he had a meeting with her in his office for an hour, the Aggrieved Worker decided to sign and get two weeks' notice pay plus the pay for the week that she had worked. He also fired Jason, the person who hooked up with the Aggrieved Worker to copy the key.
2. During cross-examination he stated that the meeting with the Aggrieved Worker was on February 18, 2014. On February 15, 2014 he found out that the Aggrieved Worker and Jason copied his key that control the front door and the bathroom door. He called and spoke with the Aggrieved Worker on Saturday, February 15, 2014. He denied that he said to her on Saturday, February 15, 2014 that she was going to the bathroom too often. Notwithstanding his denial, he said that the Aggrieved Worker was always going to the bathroom. He said that women always have problem with going to the bathroom. The Aggrieved Worker did not mention to him on Saturday about female problems.
3. He said different persons were responsible for cleaning the bathroom but that it was mostly Jason who cleaned it. He said that Jason and the Aggrieved Worker were close. Everybody had to go to the bathroom, and he did not refuse to give the key for the bathroom. He said on Monday he asked the Aggrieved Worker if she knew that the bathroom key was cut and if she knew anything about the cut key. Her reply to him was no. He showed her a picture of the cut key on his phone. He did not accuse her of lying but he knew that she was. There were two keys and one was missing. He decided that he

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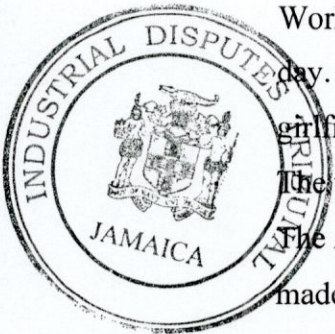
alone would have the key for the front door and the bathroom. The key was on his bunch. If he was not there, he would leave someone in charge of the key. It was the only key for the bathroom.

4. He said he did not say anything to the Aggrieved Worker before the public. He did not remember the Aggrieved Worker saying to him that the way he spoke to her on Saturday, February 15, 2014 made her feel embarrassed. He could not remember if he had discussions with her as soon as she came to work on Monday, February 17, 2014. His meeting with her on Monday lasted over an hour. He did not remember what time he gave the Aggrieved Worker the termination letter on Tuesday, February 18, 2014. He said she came to work early on Tuesday February 18, 2014, he gave her the letter and she did not work that day. After the Aggrieved Worker told him on Monday that she did not know how the key was cut he spoke with Jason. Jason told him that the Aggrieved Worker was the one who made him go and copy the key. He spoke with Jason and the Aggrieved Worker separately.
5. He said that apart from the letter dated February 18, 2014, he did not write to the Aggrieved Worker. He however talked with her on Monday, February 17, 2014. He said he knew some Jamaican law. He knew that the Aggrieved Worker had a right to be represented by someone of her choosing and that she had a right for someone to be at the meeting he had with her. To the question as to whether she was given that right, he responded that he believed that if he wanted to find out about the truth, he would have to question a person by herself. He said that he did not tell the Aggrieved Worker that she had a right to have someone to represent her at the meeting.
6. The meeting on February 17, 2014 was for an hour. He also talked with the Aggrieved Worker on February 15, 2014. The meeting on February 18, 2014 was in the morning for about half (1/2) hour. During the meetings on February 17, 2014 and February 18, 2014 he did not tell the Aggrieved Worker that she could bring a friend or a lawyer to talk on her behalf. He said that he did not need to say that to her as she had admitted that she was guilty when she signed the letter. The Aggrieved Worker knew about the meeting on Monday, February 17, 2014 from the Saturday before, as he called her into his office on Saturday and he had a talk with her. The Aggrieved Worker was guilty, and she was



therefore terminated. She admitted when she signed the termination letter and so she was dismissed because he mistrusted her.

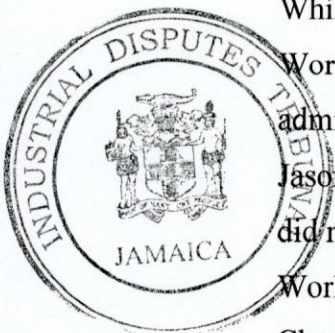
7. On re-examination he said that the Aggrieved Worker can read and write. A Cashier had to be somebody you can trust. If she was not admitting, why did she read and sign? He indicated that nobody pressured her to sign the termination letter. She was guilty. She received notice pay and vacation leave pay. He believed that she copied the key and he lost trust in her from there. On Saturday, he asked her a couple times if she knew about the cutting of the key and she said no. On Monday, when he had a meeting with her it was still no. The next day she admitted that she was guilty when she signed the letter. He gave her a lot of chances to defend herself and persons he worked with, he had to trust. The key was for the front door and the bathroom door. The Aggrieved Worker handled money. He stated he lost big trust because of what she did.
8. He was questioned by the panel. He said that Jason told him that the Aggrieved Worker asked him to cut the key. He then further examined by the Aggrieved Worker's representative and he repeated that Jason told him that the Aggrieved Worker asked him Jason, to cut the key. She did not admit between Saturday and Monday. She was guilty because she signed. The termination letter was typed by his girlfriend. His girlfriend took the key from the Aggrieved Worker on Saturday February 15, 2014. The Aggrieved Worker left the key in her machine till. She was the only one who used her machine that day. She admitted to his girlfriend who took the key from her and he said that his girlfriend was not present when he took the decision to terminate the Aggrieved Worker. The termination letter was typed on February 17, 2014 and issued on February 18, 2014. The Aggrieved Worker agreed to be dismissed as she signed the letter. He then said he made a mistake earlier in his testimony, as the Aggrieved Worker received the termination letter on February 18, 2014 when she finished working and not first thing in the morning.
9. The second witness was Mr. Germaine Daley, a taxi operator and former employee of the Company. He said that in February 2014 a key had been missing at the wholesale for about two to three weeks. Mr. Chong kept the remaining key and if someone wanted to use it, they hollered for the key. The Aggrieved Worker complained that she could not bother to holler for the key when she wanted to go to the bathroom. He eventually heard



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her say that she had to get a key for herself and she said that Jason had a key. Both she and Jason got terminated at the same time. He told both Jason and the Aggrieved Worker to be careful what they were doing as it was illegal for them to have a copied key. He did not know if the Aggrieved Worker had the key on her on February 15, 2014 when Mr. Chong called her, but he knew that she had a key.

10. When he was cross-examined, he said he never saw the Aggrieved Worker with a key until Mr. Chong called his attention to it. He was questioned by the panel and stated that he heard that the Aggrieved Worker had said that she had to get a key. He told Jason that whatever he was planning it was illegal. The key was a master key. One key was used to open everywhere. He was further examined by the Aggrieved Worker's representative after the questioning by the panel. He said he kept seeing the Aggrieved Worker going to the bathroom. He did not know which key she used to go to the bathroom.
11. The Company's third and final witness was Martin Mullings, a policeman and friend of Mr. Chong. He testified that in about 2014 sometime after 4:00 p.m. he was at Mr. Chong's business place. He and Mr. Chong have been good friends for over twenty (20) years. Mr. Chong told him about a situation he had with the two (2) workers, Jason and the Aggrieved Worker in respect of a key that they both obtained without his permission. While he was in the office Jason came in first. He knew both Jason and the Aggrieved Worker. He heard Mr. Chong talking to them. Mr. Chong read a letter to Jason and Jason admitted to the contents of the letter. He heard Mr. Chong asking him if he understood, Jason said yes and he heard Mr. Chong ask Jason to sign the letter and said that if Jason did not want to sign, he did not have to so Jason signed the document. The Aggrieved Worker came in next and a letter was read to her, she took the document and read it. Mr. Chong outlined to her that she did not have to sign if she was not in agreement. She signed the document.
12. During cross-examination he said that the Aggrieved Worker was given her letter in the afternoon, in Mr. Chong's office. He said that Jason admitted to the contents of his letter and he did not hear the Aggrieved Worker utter any words admitting to the contents of her letter. He could not recall if Mr. Chong asked the Aggrieved Worker about the key when he gave her the letter. He insisted that he was speaking the truth, he said when Mr. Chong told him about the situation Jason and the Aggrieved Worker were not present. He



Handwritten signature or initials in blue ink.

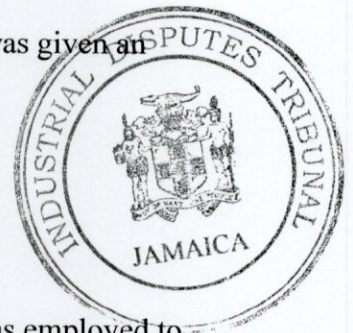
could not recall when Mr. Chong told him about the situation. He insisted that he was in the office when Mr. Chong gave Jason the letter and he heard Jason's response, but he did not hear a response from the Aggrieved Worker. He did not hear Mr. Chong ask the Aggrieved Worker about the key.

THE COMPANY'S CONTENTIONS:

1. The Company had a good relationship with the Aggrieved Worker for five (5) years, 2009-2014. He trusted her as a Cashier. The Aggrieved Worker decided to get for herself a key. The Company's Manager had a meeting with the Aggrieved Worker on Saturday February 15, 2014 and gave her three (3) days to confess. She lied to the Company and the Company could not trust her and that is why the Company discontinued its relationship with her.
2. The Aggrieved Worker was not forced to sign the termination letter. When she signed the letter, it meant that she pleaded guilty.
3. The Company's witnesses did not make up their testimony. Their evidence should be accepted and the Company objects to what the Aggrieved Worker has said at the Tribunal as being lies.
4. The Company did not breach Natural Justice as the Aggrieved Worker was given an opportunity to be heard.

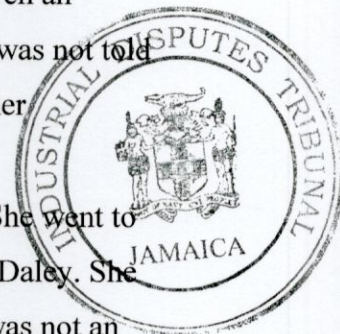
THE AGGRIEVED WORKER'S CASE:

13. The Aggrieved Worker was her sole witness and she testified that she was employed to the Company in 2009 as a Cashier. She recalled that in February 2014 she wanted to use the bathroom and she had to ask her boss, Mr. Chong for the key. It was a Saturday; she could not recall the date at the time she said she did not get the key from Mr. Chong and so she borrowed Jason's key. Jason was the person who cleaned the bathroom and he also worked in the warehouse. She said that Jason normally had a key and Mr. Chong normally did not want to give the key as he said they went to the bathroom too often. At the time she was seeing her period on that day and Jason lent her his key. She always



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- relied on him to assist her with the key, if she did not get the key from Mr. Chong, otherwise she would run across the road to Juici Beef and borrow their bathroom. She did not copy the bathroom key or any key belonging to the Company. She admitted that she had a key for the bathroom on the day in question, a Saturday it was.
14. She said she was terminated on the Tuesday, following the Saturday in question. She was terminated when she was going home at about 6:00 p.m. to 6:30 p.m. when she received a letter of termination. She signed the termination letter because she wanted the letter to be sent to the Ministry of Labour and Social Security. She did not agree with the contents of the letter as she had done nothing wrong. Mr. Chong was the person who terminated her, he was the one who accused her of illegally copying the key. She was not given an opportunity to defend herself and she was not asked to attend a hearing. She was not told by Mr. Chong that she could bring someone to assist her and so she viewed her termination as unfair.
15. She reported her termination to the Ministry of Labour and Social Security. She went to one meeting at the Montego Bay office of the Ministry. She knew Germaine Daley. She did not tell him that she had a key for herself. She knew Mark Mullings, he was not an employee of the Company at the time of her termination, Germaine Daley was an employee of the Company. He worked in the storeroom and he was her supervisor, she said only she and Mr. Chong were present when she got the termination letter.
16. When cross-examined she stated that she read the termination letter before she signed it, and nobody forced her to sign. She signed the letter because she wanted it to send off to the Ministry of Labour. It was put to her that by signing the letter, it meant that she agreed with it. She did not accept that suggestion but instead stated that she could not have asked for assistance without the letter. The only person she had discussions with about the key was Jason, she had no discussions with Germaine Daley.
17. She did not know that a key was missing, she denied saying that she had to copy the key. She said she worked for the Company from 2009 until 2014, five (5) years. It was put to her that there were meetings on Saturday, Monday and Tuesday. She said that the only meeting was the one when she got the termination letter to sign.
18. She said she was a Cashier and she did not leave her post unless there was someone to attend to it. She admitted that she got the key from Jason, she said she did not know if the



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key was for a master lock. She denied that Germaine Daley heard her saying that she needed to copy the key, she did not talk with him about the key and that Germaine Daley did not speak to her and tell her to be careful. She denied that Mr. Chong had a meeting with her on the Saturday when he asked her about the bathroom key. She agreed that Mr. Chong showed her a picture of the key on his phone.

19. She was questioned by the panel. She said that when she was terminated, she told Mr. Chong that she did not agree with the letter. She also told him that she was not going to sign anything illegal. He told her she had to sign. She spoke with someone from the Ministry of Labour later in the year. There was one meeting at the Ministry of Labour Montego Bay office. She knew about the meeting as she was contacted by phone by someone called Tameika who indicated that she should come by the Ministry of Labour.

THE AGGRIEVED WORKER'S CONTENTIONS:

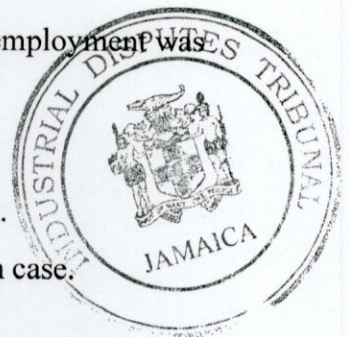
1. The Aggrieved Worker is an authentic and truthful witness. The evidence of the Company's witnesses is untruthful and should not be accepted.
2. There was no proof that the Aggrieved Worker copied the key. She got the key from Jason. There was no offence for which she should have been dismissed.
3. The Company had not complied with Section 22 of the Labour Relations Code. The termination was, therefore, unfair. There was no opportunity for the Aggrieved Worker to defend herself. She was not asked to attend a meeting by the Company. She was never told that she had the right to have someone assist her.
4. The Aggrieved Worker only took the letter so that she could take it to the Ministry of Labour.
5. Natural Justice (the rule against bias) was breached. Mr. Chong accused her and terminated her. Bias voided the decision to terminate.
6. The Aggrieved Worker should be compensated from the date of her termination to the date of the Tribunal's award.



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THE TRIBUNAL FINDINGS & RESPONSE:

1. The Aggrieved Worker was in possession of an unauthorized copy key, which she got from Jason. She also used the key to access the bathroom.
2. The Tribunal finds that the Aggrieved Worker was not a truthful witness and on all matters of divergence between her evidence and the evidence of the Company, the Company's evidence is accepted. Her explanation as to why she signed the termination letter shifted during her testimony. In examination in chief she said that she wanted evidence of termination to take to the Ministry of Labour. In cross-examination she said that she was not forced to sign, however, when she was questioned by the panel her reason shifted to being that Mr. Chong told her she had to sign. Her shifting position on this issue undermined her overall credibility.
3. Notwithstanding, that the Tribunal found that the Aggrieved Worker was not a truthful witness, it is the duty of the Company to justify the dismissal. An examination of the Company's case shows the following breaches of Section 22 of the Labour Relation Code: -
 - No disciplinary hearing was held before the Aggrieved Worker's employment was terminated.
 - The Aggrieved Worker was not charged with any offence.
 - The Aggrieved Worker was not allowed the right of representation.
 - The Aggrieved Worker was not afforded the right to make her own case.
 - No right of appeal was granted to the Aggrieved Worker.
4. In addition to the breach of the Labour Relations Code, the Company also breached Natural Justice as Mr. Chong was both the accuser and decision maker.
5. The employment of the Aggrieved Worker was terminated for disciplinary reasons. The breach of Section 22 of the Labour Relations Code and Natural Justice rendered the dismissal unjustifiable.
6. Although the Aggrieved Worker was unjustifiably dismissed, the Tribunal has also found that the Aggrieved Worker was in breach of Section 6 (iii) of the Labour Relations Code. The Aggrieved Worker had a special obligation to her employer as a Cashier. Trust was an essential element of her employment. She, when acting in the course of her employment should have been mindful of this obligation and should have refrained from



action which conflicted with her obligation. Her possession of and use of the unauthorized copy key conflicted with her obligation. The breach of Section 6 (iii) of the Labour Relations Code by the Aggrieved Worker was the ultimate cause of her dismissal. The Tribunal's award will take in account Aggrieved Worker's breach.

7. The Tribunal also concludes that the relationship between the Company and the Aggrieved Worker has broken down and reinstatement will not be considered.

AWARD:

In accordance with Section 12 (5) (c) (ii) of the Labour Relations and Industrial Disputes Act the Tribunal orders that Miss Curlene Stewart be paid the sum of Forty Thousand Dollars (\$40,000.00) which is in full and final settlement for her unjustified dismissal.

DATED THIS 30th **DAY OF JANUARY 2020**



Witness:

.....
Mr. Gary Lediard
Secretary to the Division

Marsha Smith
.....
Ms. Marsha Smith
Chairman

Jacqueline Irons
.....
Mrs. Jacqueline Irons, J.P.
Member

Chelsie Shellie-Vernon
.....
Mrs. Chelsie Shellie-Vernon
Member

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