

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 35/2023

SETTLEMENT OF DISPUTE

BETWEEN

D.P.K HARDWARE

AND

SHANEKA SAVAGE

AWARD

I.D.T. DIVISION

MR. DONALD ROBERTS, CD., JP.	-	CHAIRMAN
MR. ERROL BECKFORD	-	MEMBER
DR. DENESE MORRISON, JP.	-	MEMBER

JANUARY 6, 2025

DISPUTE NO. IDT 35/2023

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

D.P.K. HARDWARE

(THE COMPANY)

AND

SHANEKA SAVAGE

(AGGRIEVED WORKER)



REFERENCE

By letter dated December 22, 2023, the Hon. Minister of Labour and Social Security, pursuant to Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act, 1975 ("the Act") referred to the Industrial Disputes Tribunal ("the Tribunal") for settlement, the dispute between D.P.K. Hardware and Miss Shaneka Savage with the following Terms of Reference: -

"To determine and settle the dispute between D.P.K. Hardware on the one hand, and Ms. Shaneka Savage on the other hand, over the termination of her employment".

DIVISION

The division of the Tribunal selected in accordance with Section 8(2)(c) of the Act to deal with the industrial dispute comprised:

- | | | |
|----------------------------|---|-------------------------------------|
| Mr. Donald Roberts, CD, JP | - | Chairman |
| Mr. Errol Beckford. | - | Member, Member, Section 8(2)(c)(ii) |
| Dr. Denese Morrison, JP | - | Member, Section 8(2)(c)(iii) |

REPRESENTATIVES OF THE PARTIES

The **Company** was represented by:

- | | | |
|-----------------------------|---|---|
| Mrs. Yvonne Davis | - | Director, Workplace Solutions, Jamaica Employers Federation |
| Mr. Donovan Collins | - | Managing Director |
| Mrs. Pauline Murphy Collins | - | Deputy Managing Director |

The **Aggrieved** was represented by:

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

In attendance:

- | | | |
|--------------------|---|------------------|
| Ms. Shaneka Savage | - | Aggrieved Worker |
|--------------------|---|------------------|



SUBMISSIONS AND SITTINGS

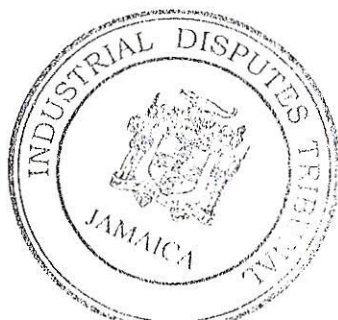
Briefs were submitted by the parties prior to the commencement of the sittings. However, at the first sitting held on April 22, 2024, the Company objected to the terms of reference arguing that Miss Savage was not terminated but had abandoned her job. As a consequence, the Tribunal on the following day referred to the Minister of Labour and Social Security for his consideration, the verbatim notes outlining the grounds for objection as stated by the Company.

The Minister responded on July 5, 2024, indicating that the Terms of Reference stands, and the Tribunal should proceed to determine whether the “termination” of Miss Savage was ‘voluntary’ or ‘involuntary’. The Company raised no further objection in light of the Ministry’s response and on September 16, 2024, commenced its case before the Tribunal.

During the proceedings the Tribunal received a total of three (3) exhibits, along with oral testimonies over four (4) sittings, which covered the period April 22, 2024 to October 30, 2024.

BACKGROUND TO THE DISPUTE

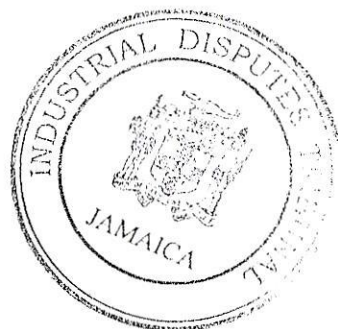
1. D.P.K. Hardware (hereinafter called “the Company”) is a retail outlet that supplies household hardware for home improvements. The business is located in Kitson Town, St. Catherine and is owned and operated by Mr. Donovan Collins, the Chief Executive Officer. Miss Shaneka Savage (hereinafter referred to as “the Aggrieved Worker”) was employed to the Company as a Counter Clerk on February 12, 2015, prior to that she was employed by Mrs. Collins at S&S Wholesale from January 2012 to February 2015.
2. On January 4, 2016, Miss Savage left the business premises sometime after 12 p.m. complaining of feeling ill. She was accompanied by a co-worker, Alicia. While Mrs. Collins was made aware of Miss Savage’s illness and was told that she was going to the doctor, a dispute surrounds whether permission was granted for her to leave the premises.
3. On January 16, 2016, Miss Savage returned to work for the first time since January 4 with a medical certificate, which stated that she was an in-patient at the Spanish Town Hospital and unfit to carry on her occupation for fourteen (14) days commencing January 4, 2016.



4. Later that day Miss Savage reported a dispute to the Ministry of Labour and Social Security regarding her employment status. Attempts were made at conciliation, but the dispute remained unresolved and was subsequently referred to the Tribunal for settlement.

THE COMPANY'S CASE

5. Mrs. Davis said that it is the Company's contention that Miss Savage left her place of work on January 4, 2016, without permission. She left after being spoken to by Mr. Collins about breaching the Company's policy, and with no prior communication, returned to work fourteen (14) days after with the copy of a medical certificate. The Company was left with no choice but to conclude that she had abandoned her job.
6. The first witness for the Company was Mrs. Collins. She said Mr. Collins is the sole proprietor of D.P.K Hardware and she worked along with him as his wife.
7. Mrs. Collins testified that on January 4, 2016, Mr. Collins spoke with Miss Savage about bags being passed across the counter, which was contrary to the Company's policy. Shortly after Mr. Collins left the premises, Mrs. Collins said she saw Alicia, an employee, taking some personal items and was told by her that she's accompanying Miss Savage, who was complaining of not feeling well, to the doctor. She said that neither Alicia nor Miss Savage sought her permission to leave.
8. She further said in her testimony that Miss Savage's sister came to the Company the following day (January 5) requesting her pay for one day. Mrs Collins told her that Shaneka was paid weekly and would receive salary on the Friday. Her sister thereafter left, taking with her a bag Miss Savage had left behind.



9. Under cross examination, Mrs. Collins affirmed that she did not attempt to call Miss Savage even although she was told of her not feeling well, and denied receiving a call from her within the first four (4) days of her leaving the premises. She added that she accepted that Miss Savage was hospitalized, as her husband told her that Miss Savage had returned with a medical certificate but because she was out for so long he needed to be advised on how to proceed. She said he did not indicate whether or not Miss Savage should return to work as it was his intention to call the Ministry of Labour for guidance.
10. Mr. Collins, the sole proprietor of the Company, was the second witness. He said upon his return from a delivery on the morning of January 4, he saw Shaneka's sister handing a bag to Alicia. He spoke to both Alecia and Shaneka about their action which was in breach of the Company's policy, before leaving at about 10:00 a.m. for Kingston.
11. Mr. Collins said that about 3:00 p.m. on his return no one was there to open the door for him and when he enquired of Mrs. Collins, she informed him that both Shaneka and Alicia had left and that Alicia had taken her bag after informing her that Shaneka was ill.
12. He stated that the following day Shaneka's sister came by to collect her (Shaneka's) bag and requested her pay, but no mention was made of the fact that she was sick. Mr. Collins testified that Miss Savage and her sister came to the office on January 16 at which time she handed him a medical certificate. He said he had some concerns regarding the time that she was out and wanted to check with the Ministry of Labour about it. Mr. Collins denied opening the door and asking Miss Savage to leave.



13. It was Mr. Collin's testimony that upon receiving the medical certificate he checked with the hospital and was satisfied with the response given that Miss Savage was in fact, hospitalized. He said that notwithstanding that, he was of the opinion that she had abandoned her job because she walked off the premises without permission.

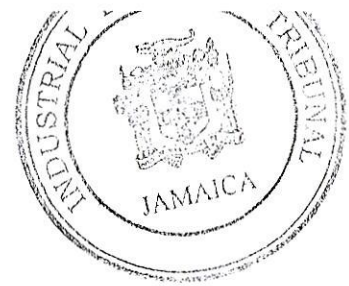
THE AGGRIEVED WORKER'S CASE

14. Miss Savage testified on her behalf, stating that she had worked at S&S Wholesale with Mrs. Collins and when the business closed she was referred to Mr. Collins at D.P.K. Hardware and started working at the front desk.
15. She asserted that while using the rest room on January 4 she felt ill, and had to use the intercom to request assistance. Alicia, a co-worker, came to her assistance and she stated that she spoke to Ms Collins through the intercom, who assisted her by opening the door to allow her to leave. She testified that Ms Collins gave her permission to leave but did not want Alicia to leave with her, and told Alicia that if she left she should not return. Alicia nonetheless accompanied her to the hospital where she was admitted.
16. Miss Savage, in her testimony, informed the Tribunal that she called Mrs. Collins and told her that she was being admitted, but believed that Mrs. Collins did not hear her and did not call back. On the day of her discharge from the hospital, Miss Savage said she took the medical certificate to Mr. Collins at work and during their exchange he told her she had abandoned her job.

ISSUES

17. The issues for consideration by the Tribunal are:
- (a) Whether Miss Savage had abandoned her job;
 - (b) Whether Miss Savage was dismissed, and if so, were the circumstances of her dismissal fair.





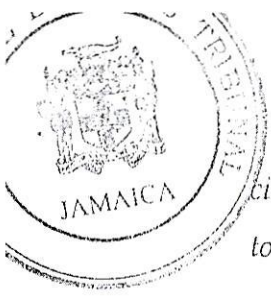
ANALYSIS

A. Whether Miss Savage had abandoned her job

18. In the absence of any statutory provision to guide us on matters of abandonment, we have to rely on the prevailing attitudes in the field of industrial relations/human resource management as well as case laws to determine what would constitute an 'abandonment of one's job'. Mr. Collins, in a letter dated November 22, 2016 to Miss Savage's representative, Mr. Howard Duncan, was, we believe, sincere in his queries as to the "*obligation of an employee to an employer when reported sick...*", and suggested, rightly so, that "*there must be some guidelines rules or law that must be followed by both parties.*" We hope to provide some consideration in that regard.
19. There appears to be a high degree of unanimity among human resource practitioners that where an employee abruptly stops reporting to work without telling his or her employer and does not return or express an intention to return to work, then job abandonment has taken place.¹ There also seems to be consensus around the fact that somewhere between three to five days would be a reasonable time to come to that conclusion.
20. Companies' 'abandonment policies' have recognised an employee's obligation to report to work in accordance with his employment contract, and where he/she is unable to report to work they are required to notify the company as soon as possible, or should ask a friend or relative to do so on their behalf. The employee must contact the company as soon as is practicable to explain the reason for his absence, and the employer should consider the explanation and its timing before determining if an abandonment has taken place.
21. Notwithstanding, experts however argue that before coming to the conclusion that the worker has abandoned his/her job, the employer should verify the absence by trying "*to find out if an employee's absence was deliberate or if there were any extenuating*

¹ <https://www.shrm.org/mena/topics-tools/tools/hr-answers/considered-job-abandonment>

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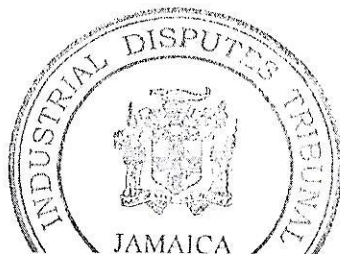
circumstances, such as medical emergency”, and that the “employers should make an effort to get in touch with them via phone, email, and other means.”²

22. The literature on the subject thus make it palpably clear of the actions to be taken to determine whether abandonment has occurred, and particularly of the important step in that regard where the employer must make every reasonable effort to contact the employee, including calling their personal or home phones, sending text or WhatsApp messages, emailing or reaching out to the employee’s emergency contact information.
23. The prevailing thoughts in the field of industrial relations are congruous with rulings expressed in a number of tribunal cases, where abandonment of job implies that the employee suddenly leaves the workstation before the end of his shift, without any apparent or legitimate reason and without informing the employer. In the text, Labour Law in the Commonwealth Caribbean: the Practice of Good Industrial Relations in the 21st Century, the distinguished author, Deborah Thomas-Felix, postulated that “*abandonment, in the industrial relations context, essentially is the deliberate and unjustified refusal of a worker to report to work and perform his/her duties.*” She noted two conditions which must be satisfied to prove that a worker has abandoned his/her job, namely: (i) failure to report to work or absence without a valid or justified reason; (ii) a clear intention to sever the employment relationship.
24. In the case **Westend Sawmill and Lumber Yard and National Union of Government and Federated Workers [TD No. 204 of 2004]**, the Industrial Court, in examining the issue as to whether a watchman employed to **Westend Sawmill** was dismissed by the company or had abandoned his job, ruled that “... *the worker did not abandon his job as a watchman but that the Company abruptly ended its contract of service with the worker without first ascertaining the true status of the Worker’s health.*” The Court concluded that by not making an effort to ascertain the reason for his absence

² Ibid.

"... the Company by its very act had dismissed the worker in circumstances which were harsh, oppressive and contrary to the principles of good industrial relations practices."

25. Mrs. Collins, in her evidence, told the Tribunal that she was made aware by Alicia that Miss Savage was ill which accounted for her sudden departure from work before the end of her shift. She did not turn up for work the following day, and despite her sister not providing any information on the status of Miss Savage's medical condition, it was expected that the employer would ascertain the true status of the worker's health. Not only was this not done on that day, but for nearly two weeks neither Mr. Collins nor his wife was moved to show an ounce of compassion or humane feelings to check on the health condition of Miss Savage, one of their employees.
26. This was indeed harsh and oppressive and contrary to the spirit and intent of the Labour Relations Code (the Code). The Code as an expression of its purpose is for employers and workers not to see the nature of industrial relations as merely procedural, but as a *sine qua non* to include human relations.
27. Indeed, Miss Savage turned up at the Company with a medical certificate, clearly indicating that she had every desire of returning to work. Mr. Collins accepted the medical certificate after his enquiries, and by so doing accepted that she was hospitalized for the period from January 4 to January 15. For him to accept that and in the same breath insisting that Miss Savage had abandoned her job can only be seen as 'harsh, oppressive and inhumane'.
28. Based on the evidence and the circumstances of the case, it is to the Tribunal pellucid and beyond peradventure that there was no 'deliberate and unjustifiable refusal' on the part of Miss Savage not to report to work as her absence was due to extenuating reason having to do with her health. And that she returned to work soon after she was discharged from the hospital, which means that she did not intent to and did not abandon her job.



B. Whether Miss Savage was dismissed, and if so, were the circumstances of her dismissal fair

29. Having determined that Miss Savage had not abandoned her job, then the question of her dismissal would have to be examined. The Terms of Reference indicated as such, that, in fact, a dispute exist over the termination of her services.
30. It is clear on the evidence that there was no written communication to Miss Savage terminating her services. In fact, Mr. Collins did not see the need to do so, as, from his own testimony, Miss Savage had abandoned her job the minute she left her post without permission. It betrayed the state of his mind, which remained unaltered despite knowing that his wife was well aware of Miss Savage's illness, and himself verifying that she was in fact hospitalized. Her action was repudiatory conduct and he accepted it as such.
31. We are therefore settled in our view that Miss Savage was terminated, and we do so based on common law principles. It is a well-established principle in the law of contract, that repudiatory conduct on the part of one party must be accepted by the other party for the contract to come to an end. In the **Hotel Four Seasons'** case before the Court of Appeal, Carey, JA. argued that:



"... the wrongful repudiation of a contract does not put an end to the contract. The innocent party has an option whether he will treat the contract as at an end and claim damages or, on the other hand, whether he will treat the contract as still subsisting and demand performance in accordance with the terms of the contract if there is repudiatory conduct on the side of one party to a contract, then the contract is not at an end until the repudiation has been accepted."

32. Mr. Collins did not demand performance from Miss Savage. He never wrote to or spoke with her about her employment status after she handed him the medical certificate from the hospital. He never communicated with her after he confirmed the authenticity of her claim that she was hospitalized, a confirmation that seemed not to have shifted his earlier view that she had abandoned her job at the time she

left the premises on January 4. He was of the mind that she had abandoned her job, that there was repudiatory conduct on her part and having accepted the repudiation needed to do nothing else. The contract, in his mind, was at an end.

33. The Tribunal is entitled to conclude that whatever Mr. Collins may have done (or not done) on January 16, after receiving the medical certificate, seemed to have betrayed to Miss Savage his intent to accept the dubious contention of abandonment as repudiatory conduct and terminated her contract. Her immediate visit to the Ministry of Labour would clearly signal the conclusion she arrived at from her interaction with him on January 16.

34. Having regard to the circumstances of the case, the Tribunal, operating within the confines of the Act and guided by common law principles, has concluded that the dismissal of Miss Savage was unjustifiable. The unfairness of her dismissal may, perhaps, best be understood and appreciated when overshadowed by the specificities - as set out in the Act - which were pertinent to our decision. These include the fact that:

- a. The effectiveness of the Code is to protect employers and workers from unfair labour practices.
- b. The dynamic nature of industrial relations, according to the Code, recognize the quintessential importance of the human element, which was absent from this case. The compassion and empathy required was not shown to Miss Savage a basic human instinct that demonstrates man's humanity to man.
- c. Work is to be seen as a social right and obligation and not a commodity, thus, the need for it to be respected and dignity accorded to those who perform it. This means that the management must show that the health and well-being of its employees reflect the primacy of the human element in what they do.



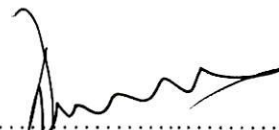
- d. The responsibility of management to ensure that effective communication takes place, and in this case, to enquire into the state of health of an employee who was ill, is a reflection of one's compassion, and a critical ingredient in good industrial relations' practice.
- e. Miss Savage was genuinely ill and had to be hospitalized, and her subsequent action demonstrated that she had every intention of returning to her job. The case of abandonment of job was not made out.

AWARD


35. The Tribunal, acting in accordance with section 12(5)(c)(ii), and having determined that the dismissal of Miss Shaneka Savage was unjustifiable, order the employer to compensate her for loss of earnings covering a period of four hundred and sixty (460) weeks at a rate of salary of eight thousand (\$8,000.00) dollars per week, including payments for outstanding vacation leave entitlements.

Dated this 6th January, 2025






 Mr. Donald Roberts, CD, JP,
 Chairman



 Mr. Errol Beckford
 Member



 Dr. Denese Morrison, JP
 Member

Witness


 Mr. Mario Ling
 Secretary of the Division