

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 41/2014

SETTLEMENT OF DISPUTE

BETWEEN

INDIES HOTEL

AND

KEION BENNETT

AND THE

AWARD

I.D.T. DIVISION

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

OCTOBER 16, 2015.

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**INDIES HOTEL
(THE COMPANY)**

AND

**KEION BENNETT
(THE DISMISSED WORKER)**

REFERENCE:

By letter dated November 25, 2014 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 are as follows:

"To determine and settle the dispute between Keion Bennett on the one hand and Indies Hotel 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 by:

- Miss Denise E. West - Attorney-at-Law
- Miss Buelah DaSilva - Manager/Operator

The **dismissed worker**, Mr. Keion Bennett was represented by:

- Mr. Howard Duncan - Industrial Relations Consultant

In attendance:

- Mr. Keion Bennett - The Dismissed Worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during six (6) sittings held between January 15, 2015 and August 17, 2015.

BACKGROUND BASED ON BRIEFS AND SUBMISSIONS TAKEN FROM THE SITTINGS:

The Hotel's Case:

Mr. Keion Bennett an employee of Indies Hotel was seen on the hotel's security camera with a young lady who it is alleged is a prostitute coming from the hotel's staff area which generally is out of bounds to the public and all unauthorized personnel.

The same young lady had visited the hotel earlier when she enquired of Mr. Bennett and requested to speak to him, where he presented himself and had a brief conversation with her. He was seen escorting

her to a guest room at the hotel, specifically room 5 which at the time was occupied by a male guest. Mr. Bennett was acting as a security guard on duty for the night.

The supervisor on duty at that instant asked Mr. Bennett about his actions as she had concerns and wanted to make sure Mr. Bennett was not breaching the hotel's code of conduct.

On further observations, it was noted that approximately 1:30 a.m. the lady exited the guest room and sat on the garden patio. At approximately 1:45 a.m. she was then seen with Mr. Bennett following which they did not emerge until approximately 2:00 a.m., heading from the staff area which is clearly marked "staff only."

The matter was discussed in a supervisory management meeting and the security cameras checked and Mr. Bennett actions were confirmed.

In addressing Mr. Bennett on the matter he explained that he took the lady to the staff area to take a "little thing off her." On further explanation to a supervisor he said that the lady wanted to use the bathroom to shower as she had a minor mishap.

Having interviewed the staff that was on duty on the night of the 14th August 2012, Mr. Bennett was subsequently terminated by letter dated 24th August 2012. See excerpt from letter:

'You had been placed on one (1) week suspension due to discrepancies found on our internal security camera – a serious breach of behavioural conduct on the job.

After reviewing your file and careful consideration of the matter, Management has made the decision to terminate your service with immediate effect due to inappropriate behavioural conduct.

Take into consideration that within the industry in which you work such behaviour is not tolerated. You are fully aware of how you should conduct yourself; familiarity with guests and/

or their visitors is NOT ALLOWED. Such was the action you displayed on the night of August 14, 2012.

You have been placed on several suspensions and received several warning letters during your tenure here and you have now exceeded them. Bearing all this in mind, Management has concluded that you are no longer fit to work in the capacity of a General Help. As a result you have been relieved of your duties.'

Mr. Keion Bennett's Case:

Mr. Bennett was employed to the Indies Hotel on the 20th January 2004. By letter dated 24th August 2012 Mr. Bennett was reminded that he was placed on one week suspension for discrepancies found on the hotel's internal security camera –a serious breach of behavioural conduct on the job.

The letter further advise Mr. Bennett that after reviewing his file and careful consideration on the matter, management has made the decision to terminate his service with immediate effect due to inappropriate behavioural conduct.

At no time was Mr. Bennett charge for any offense and allowed to challenge the allegation as made out in the letter of termination. Mr. Bennett was not provided with any evidence that was in possession of the hotel. He was not subjected to a fair and proper disciplinary hearing nor was he given the right of representation prior to his unfair and unjustifiable suspension and letter of termination.

As stated in the letter of termination dated August 24, 2012 Mr. Bennett was first suspended and then terminated for the same allegations –therefore it is a fact that he was disciplined for the same offense twice.

The principles of Natural Justice were not observed nor was the Labour Relations Code.

TRIBUNAL'S RESPONSE:

Findings of Fact

The evidence submitted has left the Tribunal to conclude the following:-

- There was mischief arising from the interaction between Mr. Keion Bennett and the guest in room 5 and a female visitor.
- A female visitor approached the front desk of the hotel attired in unbecoming wear and requested to see Mr. Bennett. Their meeting led to the visitor spending 30 to 45 minutes in the room with the guest. Thereafter Mr. Bennett taking the visitor to an area where only the hotel staff is permitted. This is clearly a violation of the hotel rules.
- Based on the evidence of Ms. DaSilva which the Tribunal finds credible, when confronted about carrying the visitor in a prohibited area, Mr. Bennett response was he took her “to the back to take a thing off her.” Subsequently, Mr. Bennett was suspended for one (1) week pending the outcome of an investigation and terminated on the 24th August 2012.

PROCEDURAL MATTER:

Prior to the termination of Mr. Bennett, Ms. DaSilva did have discussions with him with regards to his conduct. Although these discussions may have been done in good faith, there was an omission of a proper hearing which is required to preserve the rights of Mr. Bennett.

Before making any further comment on the matter the Tribunal will refer to Section (3) Subsection (4) of the Labour Relations and Industrial Dispute Act 1935

Section 3(4)

*“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.”*

Paragraph 22 of the Labour Relations Code, Disciplinary Procedure:-

- “(i) 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) 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.”*

Mr. Bennett was not granted the right to a fair and proper hearing in accordance with the principles of natural justice.

The procedure above sets out the necessary steps to be taken in conducting a proper hearing.

COMMENTS:

Although Mr. Bennett’s conduct was clearly in breach of the hotel’s policies, the denial of him getting a fair opportunity to answer to charges made against him and to afford himself with a proper representative as negated the justification of his dismissal.

In all the circumstances of this case the Tribunal has decided not to order reinstatement as requested.
The Tribunal therefore makes the following Award:

AWARD:

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

- Mr. Keion Bennett be paid twelve (12) weeks pay.

DATED THIS 16th DAY OF OCTOBER, 2015



.....
Donovan Hunter
Chairman

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Trevor Graham
Member

.....
Clinton Lewis
Member

Witness:

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Royette Creary
Secretary to the Division