

SETTLEMENT OF DISPUTE

BETWEEN

JOONG SUPERMARKET & WHOLESALE

AND

MR. PATRICK DOYLEY

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD JP	-	CHAIRMAN
MR. LESLIE HALL	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

MAY 15, 2015

IDT 44/2014

INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
JOONG SUPERMARKET & WHOLESALE
AND
MR. PATRICK DOYLEY

REFERENCE:

By letter dated July 1, 2014 the Honourable Minister of Labour and Social Security pursuant to 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 the Mr. Patrick Doyley on the one hand and Joong Supermarket and Wholesale on the other hand over the termination of his contract of 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. Leslie Hall | - | Member, Section 8(2)(c)(ii) |
| Mr. Clinton Lewis | - | Member, Section 8(2)(c)(iii) |

REPRESENTATIVES OF PARTIES:

The **Company** was represented by:

- | | | |
|-------------|---|-------------------------|
| Mr. Oanh Ho | - | Chief Executive Officer |
|-------------|---|-------------------------|

In attendance was:

- | | | |
|--------------------|---|-------------------|
| Ms. Andrene Gordon | - | Assistant Manager |
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The **Aggrieved Worker**, Mr. Patrick Doyley, was represented by himself.

SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties and oral submissions made during one (1) Sitting, on April 22, 2015.

BACKGROUND TO THE DISPUTE:

Joong Supermarket and Wholesale (the Company) is situated at 68 Newland Road in Portmore, St Catherine.

Mr. Patrick Doyley was employed to Joong Supermarket and Wholesale as a Security Guard. He was dismissed with effect from September 5, 2014 by letter dated the same

day, for being absent from his post. The matter was reported to the Ministry of Labour and Social Security but the conciliatory efforts at the Ministry failed to achieve a settlement. Consequently, the Honourable Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal for settlement in accordance with Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act 1975.

HEARING:

Mr. Oahn Ho, Chief Executive Officer of the Supermarket, advised the Tribunal that he would be representing the Company. Mr. Patrick Doyley similarly advised that he had no representative and wished to present his case personally.

The procedure of the Tribunal in the hearing of a dispute which involved dismissal was carefully explained to both parties and both agreed that the hearing proceed.

COMPANY'S CASE:

Mr. Ho stated that Mr. Doyley's duties included monitoring incoming and outgoing traffic at the gate to the premises. He said that Mr. Doyley had a habit of leaving his post without permission and not adhering to instructions. On September 4, 2014 he left his post unattended. A customer's motor vehicle was broken-into on the premises and a lap top computer stolen. Mr. Ho stated that Mr. Doyley had not informed his Supervisor or the Security Guard on patrol, that he was leaving his post to wash his face. Mr. Ho contended that on that same date a meeting was held between himself, Ms. Melinda Simpson, the Security Manager, and Mr. Doyley who did not dispute the claim, that his absence from his post allowed criminal elements easy access to the premises.

Mr. Ho further stated that a follow-up meeting was held with Mr. Doyley on September 5, 2014 and that he (Mr. Doyley) was given the opportunity to defend himself. When questioned about the duration of time that he had left his post Mr. Doyley did not give a

definitive answer. Mr. Ho said that Mr. Doyley's services were terminated for not adhering to the Company's policy, not following instructions and leaving his post unattended. Mr. Ho concluded that in his opinion due diligence was followed in that Mr. Doyley was verbally informed of the reasons for his dismissal and that he had also received a letter of termination dated September 5, 2014.

The Company called no witnesses.

THE AGRIEVED WORKER'S CASE:

Mr. Doyley stated that he had worked as a Security Guard at Joong Supermarket since May 2013 and had responsibility for issuing and retrieving gate passes from drive-in customers.

He said that he was unaware of an incident that reportedly took place on September 4, 2014 at 8:18 p.m. involving a grey Honda Civic Motor vehicle which was broken into and a lap top computer removed. He said that he had left his post to wash his face and that he had left the Relief Security who was to have relieved him at 9:00 p.m. He said that he was informed that the motor vehicle which was broken into was close to the pipe where he had gone to wash his face.

He further stated that at no time was the gate left unmanned, that there were other security personnel patrolling the grounds and that he was the one being blamed for the break-in. He drew attention to the pictures submitted in the Brief which showed that there were notices placed on the premises stating that the management had no responsibility for any loss or damage to vehicles, and therefore he should not be penalised.

He stated that on the night of the incident - September 4, 2014, he was questioned. He was not at work the following day, September 5, as it was his day off. On arrival at work

on September 6, he was told by a member of staff not to punch in and she gave him the letter of termination.

In answer to questions posed by the Chairman, he reiterated that he was questioned on the night of the incident, but did not meet again with Mr. Ho and the Security Manager prior to his dismissal. He also informed the Tribunal that he had since gained employment.

In concluding, Mr. Doyley requested that he be compensated in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000.00) based on his wrongful dismissal.

He called no witnesses.

Messrs Ho and Doyley, when invited to make their closing arguments to the Tribunal, both stated that they had nothing further to add.

DELIBERATIONS:

The Tribunal in its deliberations concluded that due process was not adhered to and that the guidelines as set out in the Labour Relations Code were not followed by the Company.

The Tribunal noted that Mr. Ho alluded to a meeting on September 5, the day following the incident which was also the date of the letter terminating Mr. Doyley's employment. Careful note was also taken of Mr Doyley's statement that he did not attend a meeting on September 5, 2014 as it was his day off and that arriving at work on September 6, he was handed the letter terminating his services.

FINDINGS:

The Tribunal finds that the dismissal of Mr Doyley was unjustifiable.

AWARD:

The Tribunal noted that Mr. Doyley had not requested reinstatement and awards that he be compensated in the amount of Ninety Thousand Dollars (\$90,000.00).

DATED THIS 15TH DAY OF MAY 2015.



Witness:

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Nicola Smith Marriott (Mrs.)
Secretary to the Division

.....
Mr. Charles Jones, CD JP
Chairman

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Mr. Leslie Hall
Member

.....
Mr. Clinton Lewis
Member