

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 7/2014

SETTLEMENT OF DISPUTE

BETWEEN

MASTER MAC ENTERPRISE

AND

MS. ANDREA BRADY CAMPBELL

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	CHAIRMAN
MR. TREVOR GRAHAM, JP	-	MEMBER
MR. EDWARD DIXON, OD	-	MEMBER

JANUARY , 2015

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**MASTER MAC ENTERPRISE
(THE COMPANY)**

AND

**MS. ANDREA BRADY CAMPBELL
(THE AGGRIEVED)**

REFERENCE:

By letter dated February 6, 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 were as follows:

“To determine and settle the dispute between Master Mac Enterprise on the one hand, and Andrea Campbell 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:

Mr. Charles Jones, CD, JP.	-	Chairman
Mr. Trevor Graham, JP	-	Member, Section 8(2) (c) (ii)
Mr. Edward Dixon, OD	-	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Ms. Christine Ximinies	-	Human Resource Manager
Mrs. Wendy McMaster	-	Director

The **Aggrieved** was represented by:

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

In attendance:

Mrs. Andrea Brady-Campbell	-	Aggrieved worker
----------------------------	---	------------------

SUBMISSIONS AND SITTINGS

Briefs were submitted by both parties who made oral submissions during seven (7) sittings held between June 5, 2014 and December 9, 2014.

BACKGROUND TO DISPUTE

Master Mac Enterprises Limited (the Company) is located at 107 Orange Street, Kingston. The Company is involved in food retailing activities.

Miss Andrea Brady Campbell was employed to Master Mac Enterprises Limited as a cashier.

She was dismissed with effect from August 9, 2013 for failing to follow direct instructions.

The matter was referred 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 dispute to the Industrial Disputes Tribunal for settlement in accordance with Section 11(A)(1)(a)(i) of the Labour Relations and Industrial Disputes Act of 1975.

COMPANY'S CASE

On June 28, 2013 it was discovered by a supervisor that a half bag of flour which was being delivered by Mr Romaine Martell, an employee, in addition to the flour contained 10 lbs oxtail, 10 lbs mutton and 12 lbs frankfurters.

On investigation it was gleaned that this half bag of flour was purchased by Mr Rohan Campbell, an employee, and cashed by Mrs Brady Campbell. Mr Campbell had advised Mrs Campbell that the purchase was being made on behalf of "Jennifer". A second check was made of the sales system and it showed that a total of three transactions had been done that day, each time the item being a half bag of flour, with the purchaser being listed as "Jennifer".

The matter was reported to the Police and on their advice three employees – Messrs Rohan Campbell, Romaine Martell and Mrs Brady Campbell were called to a meeting on June 29, 2013. Mrs Brady Campbell in the meeting said that she had sold the half bag of flour to Mr Rohan Campbell (Ras) who denied that he had made any purchase from her.

During the meeting Mr Romaine Martell resigned. Mr Campbell excused himself from the meeting to go to the rest room and did not return. It was concluded that Mrs Brady Campbell misled the Company and was sent on three weeks' leave.

The matter was further investigated and following the completion a letter dated July 26, 2013 was sent to Mrs Brady Campbell summoning her to a meeting on July 30, 2013 with respect to the charges that would be brought against her.

On July 30, 2013 – the day of the hearing - a letter was received from Mrs Brady Campbell advising that she had retained Mr Howard Duncan, Industrial Relations Consultant to represent

her. The letter also requested that the outline of the charges and the relevant documents be sent to Mr Duncan prior to the hearing. These were provided but nothing was heard from Mr Duncan. Consequently, a letter dated August 5, 2013 was sent to Mrs Brady Campbell requesting her to attend a hearing on August 9, 2013. The letter further advised as follows:

“It was discovered that you violated section 2 of the Master Mac policies procedures that speaks of theft and embezzlement of Master Mac’s stocks, funds or fraud and section 30 of the Master Mac Disciplinary rules and guidelines which speaks to not following policies and procedures in carrying out your duties.”

Mr Duncan was not in attendance on August 9, 2013 and Mrs Brady Campbell was asked whether she would like to reschedule the meeting for another time and that Mrs Brady Campbell declined, advising that she had requested Miss Valrie Dale, a supervisor to represent her.

The hearing proceeded and the conclusion was that Mrs Brady Campbell was guilty of the charges brought against her.

On August 12, 2013 a letter appealing the decision to dismiss Mrs Brady Campbell was received from Mr Duncan however it was the Company’s position that they saw no grounds on which to grant her request for an appeal of the decision to terminate her employment.

AGGRIEVED WORKER’S CASE

Mr Howard Duncan, Industrial Relations Consultant representing Mrs Brady Campbell contended that a date of August 12, 2013 was set for the hearing but the Company without consultation changed the date to August 9, 2013, and that he had instructed Mrs Brady Campbell to attend the hearing, but to remind the Management of the agreed date of August 12, 2013. He further stated that on August 9, 2013 Mrs Brady Campbell attended the hearing and had requested a re-scheduling but this was denied and she was informed that the hearing was to talk with her and that she could have asked another worker to witness the discussion. Mrs Brady Campbell was not allowed proper representation as the Representative of her choice was not present, and that there was total violation of the Labour Relations Code as Mrs Thracia Campbell-Henry, Manager, was the Accuser, Judge, Jury and Executioner in the matter.

He further contended that Mrs Brady Campbell was already disciplined as a warning letter dated July 1, 2013 had been issued to her.

In addition the Consultant stated that Mrs Brady Campbell was denied the right of appeal. The Consultant requested the Tribunal to reinstate Mrs Brady Campbell with any loss of pay and informed the Tribunal that there was an agreement reached at the Ministry of Labour and Social Security to settle the matter, but the Company failed to honour same.

FINDINGS

The Tribunal in its deliberations paid close attention to the warning letter dated July 1, 2013 addressed to Mrs Brady Campbell, which stated as follows:

“..... This warning letter to desist from this practice immediately or further disciplinary actions will be taken.

We hope that in the future will not have any reoccurrence of this nature.

Kindly take this as an opportunity to prove to us that the confidence we have in you is justified.”

The Tribunal agreed that the warning letter constituted a disciplinary penalty and should have brought closure to this matter. For the Company to have then laid charges for the offence for which Mrs Brady Campbell was already disciplined was therefore without foundation.

The Tribunal also noted the statement made by the Industrial Relations Consultant that an agreement was arrived at for a financial settlement at the Ministry of Labour and Social Security but that the Company had reneged. This was not contested by the Company.

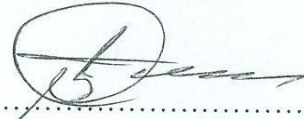
In the circumstances the Tribunal finds the dismissal of Mrs Brady Campbell to be unjustifiable.

AWARD

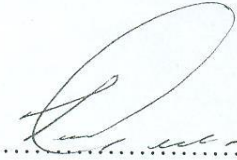
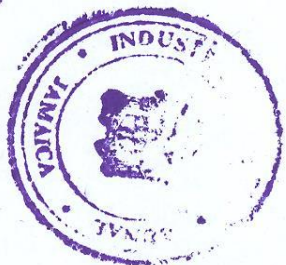
The Tribunal considers that it would be in the best interest of both sides not to order reinstatement, and orders that the worker be compensated instead.

The Tribunal therefore awards that Mrs Brady Campbell be compensated in the amount of Four Hundred Thousand Dollars (\$400,000.00)

DATED THIS 28th DAY OF JANUARY, 2015

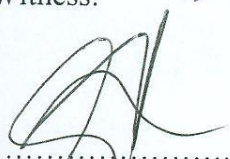


.....
Charles Jones, C.D, J.P
Chairman

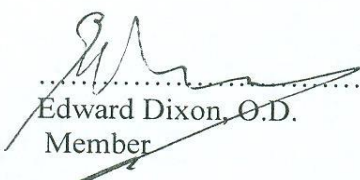


.....
Trevor Graham, J.P
Member

Witness:



.....
Gary Lediard
Secretary to the Division



.....
Edward Dixon, O.D.
Member