

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 33/2022

SETTLEMENT OF DISPUTE

BETWEEN

PRODUCTION RESOURCE SYSTEMS LIMITED

AND

MR. EVERTON JOHNSON

AND THE

AWARD

I.D.T. DIVISION

MRS. SHARON ANDERSON	-	CHAIRMAN
MRS. JACQUELINE IRONS, J.P.	-	MEMBER
DR. DENESE MORRISON, J.P.	-	MEMBER

SEPTEMBER 27, 2023

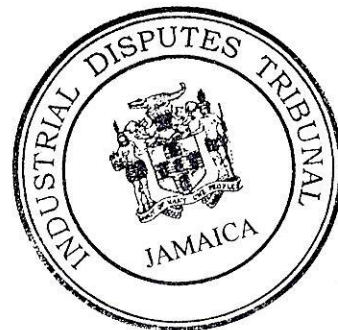
INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
PRODUCTION RESOURCE SYSTEMS LIMITED
(THE COMPANY)
AND
MR. EVERTON JOHNSON
(THE DISMISSED WORKER)

REFERENCE:

By letter dated September 12, 2022 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 Production Resource Systems Limited on the one hand, and Mr. Everton Johnson 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:

- | | | |
|-----------------------------|---|--------------------------------|
| Mrs. Sharon Anderson | - | Chairman |
| Mrs. Jacqueline Irons, J.P. | - | Member, Section 8(2) (c) (ii) |
| Dr. Denese Morrison, J.P. | - | Member, Section 8(2) (c) (iii) |

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- | | | |
|-------------------|---|-------------------------|
| Mr. Patrick Lynch | - | Chief Executive Officer |
|-------------------|---|-------------------------|

The **Dismissed Worker** was represented by:

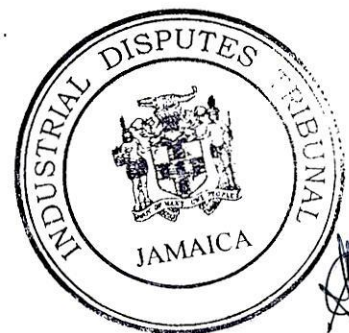
- | | | |
|----------------------|---|-----------------|
| Mr. Kevin E. A. Page | - | Attorney-at-Law |
|----------------------|---|-----------------|

In attendance was:

- | | | |
|---------------------|---|------------------|
| Mr. Everton Johnson | - | Dismissed Worker |
|---------------------|---|------------------|

SUBMISSIONS AND SITTINGS:

The Panel that was initially selected to hear and settle the dispute consisted of Mrs. Sharon Anderson, Chairman, Mrs. Jacqueline Irons, Member and Mr. Clinton Lewis, Member. Briefs were submitted by the Dismissed Worker through his Representative and four (4) sittings were held between ***December 12, 2022 and May 29, 2023***. For the first two sittings, Mr. Patrick Lynch, Chief Executive Officer of the Company was in attendance. However, notwithstanding, the directive by the Tribunal for him to submit Briefs, none was submitted. It is to be noted that he did not appear before the Tribunal at the 3rd sitting, scheduled for February 16, 2023, despite him agreeing to the dates. The Tribunal instructed the Secretary to the Division to inform the Company that it would continue hearing the matter on February 28, 2023 and March 7, 2023 as was scheduled and to advise Mr. Lynch to attend or have a Representative present, failing which the Tribunal would proceed to hear the matter ex-parte. This was in accordance with Section 16A of the Labour Relations and Industrial Dispute Act, 1975 (LRIDA). The above-mentioned dates had to be cancelled due to the illness and subsequently the death of Mr. Clinton Lewis.



Consequently, Dr. Denese Morrison, Member was selected to fill the vacancy. The parties were on March 13, 2023 written to in accordance with Section 8 (4) of the Labour Relations and Industrial Disputes Act (LRIDA). The Tribunal by way of letter dated March 22, 2023 confirmed May 29, 2023 for hearing into the dispute. Mr. Lynch by way of said letter was informed that failure to attend, the Tribunal would proceed to hear the matter *ex-parte*. On May 29, 2023, Mr. Lynch did not turn up for the hearing. The Panel after ascertaining from the Divisional Secretary that a letter with the Tribunal's decision had been sent to Mr. Lynch proceeded to hear the matter *ex-parte*.

BACKGROUND TO THE DISPUTE:

1. Mr. Everton Johnson was employed to Production Resource System Limited as a Carpenter and Warehouse Support in November 2012. On January 10, 2017, Mr. Johnson was given a letter informing him that he would be suspended for a period of two (2) weeks and in the same letter, to resume duties on January 25, 2017. Mr. Johnson on resuming duties, was given a letter dated the same date, immediately terminating his employment. The letter of termination reads:

"January 25, 2017

*Mr. Everton Johnson
5 Main Street
Central Village P.A.
St. Catherine*

Dear Mr. Johnson:

This letter serves to advise you of our decision to terminate your employment as Warehouse Support at Production Resource Systems Limited effective immediately.

This action is being taken as a direct result of a threat that was made to our Warehouse Manager on Tuesday, January 10, 2017 during a discussion regarding your absence from work on Monday, January 9, 2017 as scheduled, and which led to your subsequent suspension for a period of two (2) weeks for insubordination.

In no way does Production Resource Systems Limited condone this type of behaviour which is unacceptable and will not be taken lightly, and constitutes sufficient cause for dismissal as stipulated in the company's code of conduct.

We thank you for your effort, time and interest in working with Production Resource Systems Limited, and wish for you all the best in your future endeavours.

Kindly acknowledge receipt by signing the copy of this letter.



Yours sincerely
PRODUCTION RESOURCE SYSTEMS LIMITED

Patrick A. Lynch
Chief Executive Officer. "

2. Mr. Johnson through his Representative, Mr. Kevin Page protested his dismissal and sought the intervention of the Ministry of Labour and Social Security. There was no resolution at this stage and hence, the matter was referred to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE:

3. The failure to attend the sittings and the disregard shown to the Tribunal by the Company resulted in the matter being heard *ex-parte*.

THE DISMISSED WORKER'S CASE:

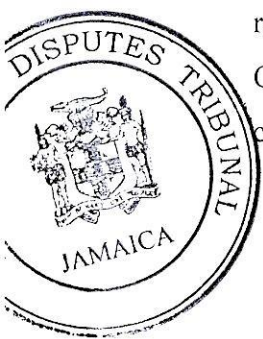
1. Mr. Johnson was the sole witness called to give evidence in support of his case. He said the dispute arose from the manner in which his employment was terminated by Production Resource Systems Limited.
2. Mr. Johnson in evidence submitted a letter to the Tribunal which was addressed to the US Embassy dated October 19, 2016 and which stated the date of his employment to the Company as being November 2012.
3. Mr. Johnson was given a letter dated January 10, 2017 (Exhibit II) regarding his refusal to work on the new days assigned on the roster prepared by his supervisor. The letter stated that Mr. Johnson was scheduled to work on Sunday, January 1, 2017 and he refused to work and that he was again assigned to work on Sunday, January 8, 2017 and he did not report to work. This, the Company stated in the same letter amounts to insubordination and according to its policies and procedures constitutes sufficient cause for disciplinary action. Consequently, Mr. Johnson was suspended without a hearing for a period of two (2) weeks without pay effective January 11, 2017.



4. Mr. Johnson in evidence stated that the Warehouse staff works five (5) days per week. His original days off were Saturdays and Sundays. However, when a new Warehouse Manager was appointed, he unilaterally decided to change the work schedule of the staff. All workers were asked to change the days taken as their days off and he (Mr. Johnson) selected Sundays and Mondays. He was informed verbally by the new Warehouse Manager that he could not get Sundays off, however he was not given an alternate day. Hence, he continued to take Sundays as one of his days off which resulted in him being suspended for two weeks.
5. Mr. Johnson testified that upon him resuming work on January 25, 2017, he was handed a letter terminating his employment with immediate effect. The termination letter stated that the decision to terminate his employment was a direct result of a threat that the Company claimed that he made to the Warehouse Manager on Tuesday, January 10, 2017.
6. It is Mr. Johnson's evidence that there were no meetings held or consultation with him in relation to the allegation of a threat. The letter of suspension stated that he should return to work on January 25, 2017, therefore, he had a legitimate expectation that he would have been allowed to resume his duties after the two weeks suspension period. There was no hearing prior to his termination and he stated that the manner in which he was terminated was in breach of the rules of natural justice.
7. Mr. Johnson through his representative submitted that he is entitled to damages and asked that he be compensated for his unjustified dismissal.

FINDINGS OF THE TRIBUNAL:

8. The Tribunal deliberated and gave careful consideration to the evidence presented by Mr. Everton Johnson in the absence of the Company presenting a case.
9. Mr. Johnson's letter of termination dated January 25, 2017 stated that his termination was due to a direct threat he made to the Warehouse Manager on January 10, 2017 during a discussion regarding his absence from work on Monday, January 9, 2017. The letter went on to state that the Company does not condone this type of behavior which is unacceptable and constitutes sufficient cause for dismissal. It is to be noted that the letter of suspension referred to Mr. Johnson being

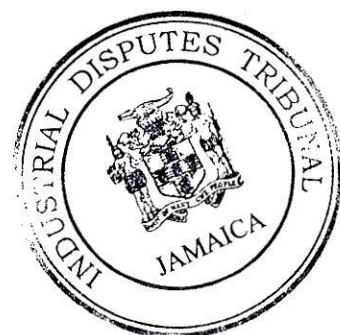


absent from work on Sunday, January 8, 2017 and not Monday, January 9, 2017. The day the Company had an issue with Mr. Johnson taking as a day off was Sunday and not Monday which is clearly stated in the letter of suspension. This was corroborated in the evidence given by Mr. Johnson.

10. The Tribunal finds it quite interesting that nowhere in the suspension letter, an allegation as serious as a threat was mentioned. As a matter of fact, Mr. Johnson was informed in writing to return to work. Hence, it was his expectation that he would continue to work after the suspension.
11. The Tribunal finds it very strange that the very day Mr. Johnson returned to work he was summarily dismissed for an allegation of threat, an allegation he was hearing about for the first time.
12. The Tribunal has concluded that the behaviour exhibited by the Company has been quite unorthodox. In the first place, Mr. Johnson was suspended without pay for an offence he was not given an opportunity to defend. As soon as he resumes from suspension he was dismissed, again without any charges being proffered against him or him being called to respond to the allegations.
13. The Company is obliged to be guided by the rules of natural justice and the statutory requirement. The rules of natural justice dictate that a person accused has the right to be heard in his/her defence of any accusation being made against him/her. In the instant case, the Tribunal finds that the procedure adopted by the Company in terminating Mr. Johnson's employment was devoid of natural justice principles and inconsistent with Paragraph 22 of the Labour Relations Code (1976).
14. The Tribunal finds it most appropriate to refer to Paragraph 2 of the Labour Relations Code which states that:

"... Recognition is also given to the fact that work is a social right and obligation, it is not a commodity; it is to be respected and dignity must be accorded to those who perform it, ensuring continuity of employment, security of earnings and job satisfaction..."

15. Mr. Johnson was not accorded the dignity he had a right to.

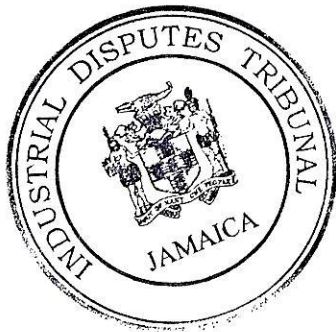



16. The Tribunal has concluded based on the evidence submitted that Mr. Johnson's dismissal was unjustified and awards accordingly.


AWARD:


17. The Tribunal therefore awards that Mr. Everton Johnson be compensated in the amount of Four Million Two Hundred Thousand Dollars (4,200,000.00) for his unjustifiable dismissal.

DATED THIS 27th DAY OF SEPTEMBER, 2023

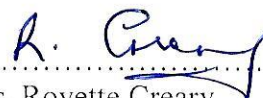



.....
Mrs. Sharon Anderson
Chairman


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


.....
Dr. Denese Morrison, J.P.
Member

Witness


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Ms. Royette Creary
Secretary to the Division