

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 17/2014

SETTLEMENT OF DISPUTE

BETWEEN

PROPRIETORS STRATA PLAN #649

AND

MR. KENRIC DAVIS

AND THE

AWARD

I.D.T. DIVISION

- MR. CHARLES JONES, C.D., J.P. - CHAIRMAN
- MR. LESLIE HALL - MEMBER
- MR. DWIGHT NELSON, C.D., J.P. - MEMBER

DECEMBER 30, 2015.

IDT 17/2014

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

PROPRIETORS STRATA PLAN #649

(THE COMPANY)

AND

MR. KENRIC DAVIS

(THE AGGRIEVED)

REFERENCE:

By letter dated March 31, 2014 the Honourable Minister of Labour and Social Security pursuant to Section 11 A (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 Proprietors Strata Plan #649 on the one hand and Mr. Kenric Davis 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. Charles Jones, C.D., J.P. - Chairman
- Mr. Leslie Hall - Member, Section 8(2) (c) (ii)
- Mr. Dwight Nelson, C.D., J.P. - Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF PARTIES:

The **Company** was represented by:

- Mr. Anthony James - Chairman

In attendance were:

- Ms. Natalie Douglas - Attorney-at-Law
- Mrs. Ann Lindo - General Manager, La Maison

The **Aggrieved** was represented by:

- Mr. Gregory C. Reid - Attorney-at-Law

In attendance were:

- Mr. Kenric Davis - Aggrieved Worker
- Mrs. Yvonne Davis - Wife of the Aggrieved

SUBMISSIONS AND SITTINGS:

Briefs were submitted by the aggrieved party only and oral submissions were made during eighteen (18) sittings held between June 23, 2014 and December 08, 2015.

BACKGROUND TO THE DISPUTE:

Proprietors Strata Plan #649 which was registered on August 2, 1995 comprises the Sunshine Village Complex/Singles Hotel (“the Complex”) in Negril, Hanover.

Mr. Kenric Davis was employed to NCB Investments Limited and assigned to the Complex with effect from February 1, 1995. His employment continued in the capacity of Strata Manager after the strata registration of the Complex on August 2, 1995.

On June 28, 2013 Mr. Davis received a letter terminating his employment with immediate effect due to a loss of confidence “in his ability to perform his designated duty”. Mr. Davis objected to the manner of his dismissal citing a violation of the Labour Laws. In addition, he claimed redundancy payment as in his opinion his position of Strata Manager was abolished due to the fact that La Maison Property Services had taken over the management of the Complex.

He wrote to Mr. Edwin Wint, the then Head of La Maison advising him that he would be referring the matter to the Ministry of Labour and Social Security for conciliation. Mr. Wint replied stating that the position was not made redundant and that he was neither entitled to severance nor redundancy payment.

The matter was reported to the Ministry of Labour and Social Security where the parties failed to arrive at 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 of 1975.

THE HEARING:

At the outset, Mr John Bassie, Attorney-at-law representing Proprietors Strata Plan #649 (Strata Plan) submitted to the Tribunal that this was a matter that should not have been before the Tribunal as in his opinion it could have been settled between the Parties.

Sittings were thereafter held between July 4, 2014 and December 16, 2014, and at each sitting it was agreed that talks would have continued at the local level.

The Tribunal subsequently, was orally advised that an agreement for settlement had been reached. However, after an elapse of time and having received no documentary evidence of the agreement, the Tribunal convened a sitting of July 13, 2015.

At this sitting Mr. Gregory Reid (Jnr), Attorney-at-law attended and confirmed to the Tribunal that an agreement had been reached in principle, that payments had commenced but had ceased, and therefore the terms of the agreement were not being honoured. He stated that no formal documents existed and that their position was to return to the proceedings at the Tribunal. The sitting was adjourned as Mr. Bassie; attorney for Proprietors Strata Plan #649 was not present.

At the sitting convened on September 8, 2015, Mr Bassie attended and advised the Tribunal that he would no longer be representing Proprietors Strata Plan #649. The Tribunal then set September 21, 2015 for hearings to continue.

At this sitting, Mr. Anthony James, Realtor, attended and advised that he was now the Chairman of the Strata Plan and would be representing Proprietor Strata Plan #649 at the hearing. He requested time for consultation with his Executive and Board of Directors.

Members retired to consider the request, and on resumption the Chairman advised as follows:

"The Tribunal in its deliberation paid close attention to the arguments advanced and the proposals made, and we have also given consideration to Mr. James' explanation as to the approval process that he would have to go through in regard to reaching an acceptable agreement. We have decided that the Tribunal will set a date and the date we have in mind is Monday, 16th November, where if at that point in time there is no agreement to the proposals made, the Tribunal will commence hearing the matter. That is our ruling and it will be at 10:00 a.m."

The Tribunal commenced hearing the matter on Monday, November 16, 2015.

CASE OF THE COMPANY:

Mr. James advised the Tribunal of the difficulties he was having in obtaining information regarding what had transpired previously, the adverse financial situation of the Strata Plan, as well as the failure of the Executive of the Strata Plan to date to finalize this matter.

Miss Natalie Douglas, Attorney-at-law, who was present with Mr. James, stated that the Management of the Strata Plan needed more time, to deal with the matter, and if not given the time, it could form the basis of an appeal.

The Chairman advised her that the matter had been referred to the Tribunal for settlement over eighteen months ago and that ample time had been allowed for the Strata Plan to try to arrive at a settlement.

Mr. Reid, attorney representing Mr. Davis said he failed to see any real effort by the Strata Plan to conclude a settlement.

The procedure of the Tribunal in hearing matters of this nature was explained to Mr. James in detail and he was requested to present the Strata Plan's case and to make his opening address. Mr. James advised that his earlier statements comprised his opening address, and requested the Tribunal to take into consideration the financial status of the Strata Plan in its decision.

He called no witnesses.

Mr. James in his closing arguments said that from the outset Strata Plan #649 had arrived at an agreement negotiated by Mr. Bassie. He further stated that lack of information in this regard had limited his presentation and he again spoke of the challenges faced in the management of the Strata Plan.

He admitted that Mr. Davis had been dismissed contrary to the Labour Laws and asked the Tribunal to be just in its Award.

CASE FOR THE AGGRIEVED:

Mr. Gregory Reid, Attorney-at-law representing Mr Davis contended as follows:

- “(1) [His client] was never informed of the specific charges against him*
- (2) He was never provided the charges in writing*
- (3) He was never provided with the evidence to support these charges*
- (4) He was never given the opportunity to be heard or allowed representation*
- (5) He was never afforded the opportunity for an appeal*
- (6) He was terminated without being given any opportunity to defend himself whatsoever”.*

Mr. Davis was called as a witness. He testified that he never had a problem of discipline and was never written to or spoken to about his performance and that prior to June/July 2013 there was no indication to him of any loss of confidence or trust in him. He stated that just prior to his dismissal an audit was carried out on the systems and procedures in place and further explained that the person conducting the audit had indicated that these were in order.

Mr. Reid in closing said that in accordance with the provisions of law and practice in matters of termination, the onus was on the employer to justify their actions. This having not been done, he was claiming compensation on behalf of Mr. Davis with respect to the following:

- Loss of earnings and future prospects of employment
- A violation of the Rules of Natural Justice in the dismissal of Mr. Davis
- Redundancy payments
- Payment for outstanding vacation leave

TRIBUNAL'S DELIBERATION:

Members in their deliberation noted the progression of the hearing of this dispute. The parties having agreed at the early sitting of the Tribunal to hold talks at the local level reportedly arrived at a settlement which was partially honoured by Strata Plan. No evidence of this settlement was presented to the Tribunal.

The Tribunal despite requests and not being provided with the Agreement, decided to resume sittings to hear this matter in keeping with the reference by the Honourable Minister of Labour and Social Security which had mandated the Tribunal to determine and settle this dispute.

The Tribunal in its deliberations noted that on June 28, 2013 Mr. Davis was issued a letter of dismissal despite having not been charged and tried for any disciplinary breach of conduct.

Members gave careful consideration to the evidence presented and noted the requests of the parties concerning certain factors they would wish the Tribunal to take into consideration when making its Award.

Following the deliberations the Tribunal concluded that Mr. Davis' dismissal without informing him of any disciplinary charge and allowing him to answer same was a gross violation of an accused worker's rights. Also, that the manner in which Mr. Davis was dismissed was inconsistent with the clear-cut directions of the Labour Relations and Industrial Disputes Act and the guidelines contained in the Labour Relations Code.

TRIBUNAL'S FINDINGS:

The Tribunal therefore finds that Mr. Davis' dismissal was unjustifiable.

AWARD:

The Tribunal's Award is for Mr. Davis to be compensated in the amount of Six Million Dollars (\$6M) for the unjustifiable action of the Proprietors Strata Plan #649 in terminating his services. Any previous compensation paid to Mr. Davis should be deducted from this amount.

DATED THIS ^{30th}..... DAY OF December, 2015.



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

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Leslie Hall
Member.

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Dwight Nelson, C.D., J.P.
Member.

Witness:

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Keisha Mighty-Brown
Acting Secretary to the Division.