

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 36/2013

SETTLEMENT OF DISPUTE

BETWEEN

RANGER PROTECTION AND SECURITY COMPANY LIMITED

AND

MR. CLAUDE SCOTT

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD, JP	-	CHAIRMAN
MR. TREVOR GRAHAM, JP		MEMBER
MR. CLINTON LEWIS		MEMBER

SEPTEMBER 4, 2015

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**RANGER PROTECTION AND SECURITY COMPANY LIMITED
(THE COMPANY)**

AND

**MR. CLAUDE SCOTT
(THE AGGRIEVED)**

REFERENCE:

By letter dated August 12, 2013, the Honourable Minister of Labour and Social Security in accordance with Section 11 (1) of the Labour Relations and Industrial Disputes Act (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement the industrial dispute described in the Terms of Reference.

The Terms of Reference were as follows:

“To determine and settle the dispute between Ranger Protection and Security Company Limited on the one hand and Mr. Claude Scott 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, CD, JP - Chairman
- Mr. Trevor Graham, JP - Member, Section 8(2) (c) (ii)
- Mr. Clinton Lewis - Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- Mr. Zavia Mayne - Attorney-at-Law
- In attendance was:
- Mr. Michael Elliott - Regional Manager

The **Aggrieved** was represented by:

- Ms. Dameta Gayle - Attorney-at-Law
- In attendance was:
- Mr. Claude Scott - Aggrieved worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during eight (8) sittings held between November 12, 2013 and May 7, 2015.

BACKGROUND TO THE DISPUTE:

Ranger Protection and Security Company Limited (Ranger Protection) (the Company) has been in operation since February 1985. The Company is in the field of private security, maintaining a guard force of over one thousand five hundred (1500) Security Officers. Ranger Protection is the third largest security guard company on the island.

Mr. Claude Scott was employed as a Security Guard to Ranger Protection, and has claimed that his service was terminated by the Company. The Company's position is that Mr. Scott was

rostered for duty and did not report for duty, and that consequently he was regarded as having abandoned his job. The matter was referred to the Ministry of Labour and Social Security, but the meetings at the Ministry 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.

COMPANY'S CASE:

The Company stated that in November 2012 the Administrator for the Harbour View Health Centre reported that Mr. Claude Scott, a Security Guard with Ranger Protection was at the same time employed as a Male Orderly at the said Health Centre. It was stated that this resulted in a conflict of interest.

Mr. Scott was called to a meeting in November 2012 with supervisors of the Company and he was informed that in light of this report he would be transferred to work at the Bustamante Hospital for Children. Mr. Scott was upset with the decision and consequently did not report for duties at the hospital. The Company stated that they tried to contact Mr. Scott by telephone but was unsuccessful.

The Company stated that while there were disciplinary procedures in place, none were pursued against Mr. Scott in light of the fact that he did not turn up for duties and, after three days of not reporting, he was considered to have abandoned his job.

The Company contended that Mr. Scott was not dismissed by the Company as he was told to report to the Bustamante Hospital for Children which he failed to do and therefore had abandoned his job.

CASE OF THE AGGRIEVED:

The Attorney representing Mr. Scott submitted the following argument.

Whilst working at the Harbour View Health Centre in the capacity of a Security Guard, Mr. Scott became aware of a vacant position of a Male Orderly, at the South East Regional Health Authority and at the Harbour View Health Centre. He applied for the post and was advised that he was accepted for the position by way of letter in October 2005 and worked in that capacity

from October 2005 to August 2012.

He informed employers at Ranger Protection who acquiesced by providing him with nightly hours and dates which did not conflict with the hours which were required of him as the Male Orderly at the Harbour View Health Centre.

At the time of his dismissal Mr. Scott worked with South East Regional Health Authority – SERHA - for 7 years whilst concurrently working for Ranger Protection for 11 years, with the full knowledge of his employers.

On August 14, 2012 Mr. Scott received a call from Mr. Michael Elliott, Regional Manager, advising him that he would need to resign one of his jobs, either as Male Orderly for SEHRA or as a Security Guard for Ranger Protection. This was followed by a call from Mr. Morris Whittingham, Zone Chief, advising him that he should take up no more duties with Ranger Protection after that Tuesday, and that he should report to the Base to speak with the Manager.

Upon attending the Base on August 15, 2012 he met with Mr. Chin, Managing Director of the Company at that time, who also advised him of the Company's position, that is, that Mr. Scott needed to resign. Mr. Scott advised him of his financial position and the need to retain both jobs and Mr. Chin advised Mr. Scott that he would speak to Mr. Whittingham and that the Company would contact him.

Since the meeting of August 15, 2012, no further contact was made with Mr. Scott and he was not assigned any further duties. The last date that Mr. Scott was rostered for duty was July 26, 2012. He maintained that he was unfairly and unduly terminated by the Company that he had given over 11 years of service.

TRIBUNAL'S DELIBERATIONS:

The Tribunal in its deliberations considered the following:

Mr. Scott commenced working with Ranger Protection in 2001. While employed to Ranger Protection, he also commenced employment with the South East Regional Health Authority

(SERHA) and was assigned to the Harbour View Health Centre in 2005. This was the same location at which he was assigned as a Security Guard, and his employment to both entities must have been known by the parties and accepted.

The position of the Company was that in November 2012, a report was received from the Administrator of the Health Centre alluding to a conflict of interest as it related to Mr. Scott being employed to Ranger Protection and SERHA simultaneously. Consequently, a meeting was held on November 28, 2012 at which Messrs Elliot and Whittingham informed Mr. Scott of the complaint and advised him that he would be assigned duties at the Bustamante Hospital for Children.

Mr. Scott in his evidence stated as follows:

- On August 14, 2012 he received a telephone call from Mr. Whittingham advising him that he should not take up duty but should instead report to Management.
- On August 15, 2012 he spoke to Mr. Chin, who advised him that having two jobs at the same time was creating a conflict of interest.
- He had not attended a meeting on November 28, 2012; and that the last date he attended a meeting at Ranger Protection was on August 15, 2012.
- Messrs Whittingham and Elliott had never spoken to him about a conflict of interest.
- He had seen no roster assigning him to the Bustamante Hospital for Children.

The Tribunal took note of the evidence of Mr. Scott that he had attended no meeting with Messrs Elliot and Whittingham in November, 2012, and noted further that no minutes of this meeting were presented to the Tribunal. Neither was a duty roster produced to show Mr. Scott's assignment to the Bustamante Hospital for Children, and indeed the duty rosters produced in evidence were up to July 2012.

Note was also taken of the explanation that the method of rostering Security Guards for duty at Ranger Protection was by way of a written document stating the Site Name, Post Name, Date and Time of duty. No such roster was presented to the Tribunal to reflect Mr. Scott's assignment to the Bustamante Hospital for Children.

Further, note was also taken that Mr. Elliot, in his evidence, stated that Mr. Scott was not assigned any further duties in July as he could not be contacted.

The Tribunal considered carefully the position of the Company, that Mr. Scott was not dismissed but that he had abandoned his job and also noted that the Attorney representing Mr. Scott maintained that he could not report for duty as he had not been rostered since July 2012, and therefore he was terminated from his job. The Tribunal referred to the Terms of Reference submitted which read:

“To determine and settle the dispute between Ranger Protection and Security Company Limited on the one hand and Mr. Claude Scott on the other hand over the termination of his employment.”

The Tribunal noted that there was no objection by the parties to these terms which spoke to the termination of Mr. Scott’s employment.

The Tribunal agreed that the declaration made by the Attorney for the Company that no letter of termination was issued to Mr. Scott was factual. Mr. Elliot in his evidence stated that the normal procedure was that an employee who did not report for duty after three (3) days was considered to have abandoned his/her job.

The Tribunal was presented with no evidence to show that this procedure was followed and was of the view that the Company had a responsibility to have made Mr. Scott aware of the fact that they had regarded him as having abandoned his job.

It did not escape the Tribunal’s attention that the Company gave evidence of a meeting on November 28, 2012, and that during this meeting Mr. Scott was advised that he would be transferred to the Bustamante Hospital for Children. On the other hand, Mr. Scott maintained that the last meeting he had with any representative from the Company was on August 15, 2012.

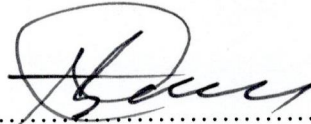
FINDINGS

The Tribunal, based on the evidence presented and following the deliberations, agreed that the Company's handling of this matter was not in keeping with accepted human resource management practices. Having seen no written evidence that Mr. Scott was rostered for duty at the Bustamante Hospital for Children, as also no written instructions regarding his absence, concluded that, by its actions, the Company had constructively separated Mr. Scott from his employment with Ranger Protection and that the manner in which this was done, rendered his separation unjustifiable.

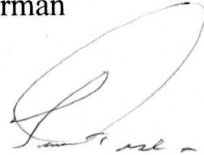
AWARD

The Tribunal agreed that Mr. Scott should not be reinstated. The Tribunal awards that he should be compensated by the payment of twenty (20) weeks basic pay.

DATED THIS 4th DAY OF SEPTEMBER 2015



.....
Charles Jones, CD JP
Chairman

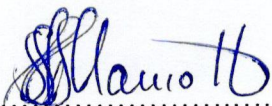


.....
Trevor Graham, JP
Member



.....
Clinton Lewis
Member

Witness:



.....
Nicola Smith Marriott (Mrs)
Secretary to the Division