

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 28/2015

SETTLEMENT OF DISPUTE

BETWEEN

TYCO FOODS LIMITED

AND

MR. DOUGLAS CUNNINGHAM

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

FEBRUARY 22, 2016

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**TYCO FOODS LIMITED
(THE COMPANY)**

AND

**MR. DOUGLAS CUNNINGHAM
(THE AGGRIEVED WORKER)**

REFERENCE:

By letter dated September 3, 2015, 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 Mr. Douglas Cunningham on the one hand, and Tyco Foods Limited 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 THE PARTIES:

The **Company** was represented by:

- Mr. Lloyd Campbell – Proprietor/C.E.O.
- Miss Camille Richards – Customer Service Manager/Group HRM

In attendance was:

- Mr. Clinton Donaldson – Supervisor

The **Aggrieved worker** was represented by:

- Mr. Elvis Lennon – Industrial Relations Consultant

In attendance was:

- Mr. Douglas Cunningham – The Aggrieved Worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties which made oral submissions during three (3) sittings held between November 23, 2015 and February 1, 2016.

BACKGORUND TO THE DISPUTE:

Tyco Foods Limited (“the Company”) is engaged in food processing and is situated at 12 Westminster Road, Kingston 10.

Mr. Douglas Cunningham was informally employed from 2011 by Tyco Foods Limited to perform security functions. This employment was formalized in May 2013. He was dismissed

with effect from July 29, 2014, by letter of the same date, which the Company said was due to his leaving the compound on July 28, 2014, with items belonging to the Company, without authority, his violent outburst at the time and his absence from work on July 29, 2014.

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 of 1975.

THE COMPANY'S CASE:

Miss Camille Richards, Customer Service and Group Human Resources Manager, representing the Company submitted that Mr. Cunningham was employed in 2011 as a Watchman. This appointment was of an informal nature due to his relationship with the Chief Executive Officer and he was allowed to live on the Company's premises which he did up to 2014.

In May 2013 this appointment was formalized in writing and he was given an increase in pay. She further submitted that during this period there were reasons to doubt Mr. Cunningham's integrity and his behaviour at times was unsatisfactory.

Two witnesses were called – Mr. Clinton Donaldson, Supervisor, and Mr. Martin Robinson, Security Guard, both employees of the Company. Both persons testified that on July 28, 2014, Mr. Cunningham was leaving with items belonging to the Company. These were discovered in his bag when he was searched. They said that on the discovery, Mr. Cunningham became boisterous and abusive and that he pulled a knife and slashed out and was only prevented from doing damage by the gate which was being closed.

THE AGGRIEVED WORKER'S CASE:

Mr. Elvis Lennon, Industrial Relations Consultant representing Mr. Cunningham, stated that Mr. Cunningham was unjustifiably dismissed. He submitted inter alia as follows:

- 1) Mr Cunningham's right to a disciplinary hearing was breached.
- 2) He was not charged for any offence.

- 3) No evidence was presented to prove that he knew of any breach or that he had committed any offence; and
- 4) He was denied the right of appeal.

He called Mr. Cunningham as a witness.

Mr. Cunningham in his testimony denied that he had Company property in his bag or that he had pulled a knife. He spoke passionately regarding his relationship with the Chief Executive Officer and of the work he had done on his behalf. He also testified that on the evening of July 28, 2014, after leaving the Company following the incident, he received a call from Mr. Lloyd Campbell, Chief Executive Officer, telling him that he was fired.

TRIBUNAL'S DELIBERATION:

The Tribunal in its deliberation noted the following:

- 1) The informal manner in which Mr. Cunningham's appointment was effected.
- 2) That there were some discrepancies in the evidence of the Company's witnesses in regard to the items in Mr. Cunningham's bag
- 3) Mr. Cunningham denied that he had pulled a knife although he admitted that he had a knife in his bag.

Members also considered the manner in which Mr. Cunningham's services were terminated, in that following an incident on the evening of July 28, 2014, he received a letter of dismissal dated July 29, 2014, which in effect was tantamount to summary dismissal.

FINDINGS:

The Tribunal noted that the procedure adopted in dismissing Mr. Cunningham was at variance with a number of the guidelines set out in the Labour Relations Code, in that:

- I. No disciplinary charges were preferred against him.
- II. He was not afforded an opportunity to defend himself; and
- III. He was not granted the right of an appeal.

It is because of these breaches that the Tribunal finds that the Company erred in the manner in which Mr. Cunningham's dismissal was effected, thereby rendering his dismissal to be unjustifiable.

AWARD:

The Tribunal decided not to order reinstatement after due consideration of the circumstances of this case. In accordance with Section 12(5)(c)(i) of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Mr. Cunningham be paid Seventy-Five Thousand Dollars (\$75,000) as compensation.

DATED THIS 22ND DAY OF FEBRUARY, 2016



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

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Leslie Hall
Member

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

Witness:

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Nicola Smith Marriott
Secretary to the Division