

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 10/2014

SETTLEMENT OF DISPUTE

BETWEEN

A.E. PARNELL & COMPANY LIMITED

AND

MR. DEAN WILLIAMS

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, C.D., J.P. - CHAIRMAN

MR. TREVOR GRAHAM, J.P. - MEMBER

MR. CLINTON LEWIS - MEMBER

MARCH 19, 2015

IDT 10/2014

INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
A.E. PARNELL & COMPANY LIMITED
AND
MR. DEAN WILLIAMS

REFERENCE:

By letter dated February 21, 2014 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 A. E. Parnell Company Limited on the one hand and Mr. Dean Williams on the other hand over his claim for vacation leave pay for the duration of his employment."

By letter dated February 24, 2014 the Terms of Reference were amended as follows:

“To determine and settle the dispute between A. E. Parnell & Company Limited on the one hand and Mr. Dean Williams on the other hand over his claim for vacation leave pay for the duration 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.	-	Chairman
Mr. Trevor Graham	-	Member, Section 8(2)(c)(ii)
Mr. Clinton Lewis	-	Member, Section 8(2)(c)(iii)

REPRESENTATIVES OF PARTIES:

The Company was represented by:

Mr. Kwame O. Gordon	-	Attorney-at-Law
Ms. Yana Samuels	-	Attorney-at-Law

In attendance were:

Mr. Oscar Bridge	-	Director
Mr. Kenneth Myrie	-	Financial Controller

The **Union** was represented by

Mr. Rudolph Thomas - Industrial Relations Consultant

In attendance was:

Mr. Dean Williams - Aggrieved Worker (not at all the sittings)

SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties and oral submissions made during ten (10) sittings, from May 26, 2014 to February 2, 2015.

BACKGROUND TO THE DISPUTE:

A. E. Parnell & Company Limited

A.E. Parnell & Company Limited (the Company) was incorporated in 1958 and has as its core business the loading and unloading of ships of various sizes with various types of cargo to and from various ports of the world.

The Company provides full stevedoring services in the cargo handling sector including, containers, roll on roll off, vehicles, break-bulk, bulk, project and heavy lift shipments.

Mr. Dean Williams

Mr. Williams was employed to the Company in the capacity of Stevedoring Timekeeper in December 1982. On the 1st of October 1997 he was promoted to Stevedoring Supervisor and voluntarily resigned with effect from March 31, 2013.

The Dispute

Mr. Williams by letter dated April 4, 2013 wrote to the Company stating that his records did not reflect him being granted vacation leave from 1982 to at least 2003 and requested to be remunerated for all outstanding holiday with pay due to him.

Follow-up correspondence between Mr. Williams and the Company did not resolve the matter, he sought the assistance of Mr. Rudolph Thomas, Industrial Relations Consultant, and subsequently the Ministry of Labour and Social Security was requested to conciliate. Meetings were held at the Ministry but no agreement was reached between the parties. As a result, the Honourable Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal for settlement.

THE COMPANY'S CASE:

The Company contended as follows:

- Mr. Williams was appropriately compensated for vacation leave up to the date of his resignation and that he was not due any further compensation as the Company had acted in accordance with the Holidays with Pay Act and the Holidays with Pay Order LN 189 of 1973.
- Mr. Williams was only entitled to two (2) weeks vacation leave each year for the first five (5) years of employment and thereafter, three (3) weeks each year.
- The Company's policy regarding vacation leave, of which Mr. Williams was aware, is that vacation leave is not accumulative and must be taken by an employee at the requested time. This policy would have been communicated to Mr. Williams in his letter of employment as is customary in all letters of employment issued by the Company.

The Company further contended that they had no record of Mr. Williams' submission of any oral or written enquiry or complaint in relation to his not being granted vacation leave, or payment in lieu of vacation leave.

THE AGGRIEVED WORKER'S CASE:

Mr. Thomas submitted that the Company had no standard format for the application of vacation leave. He stated that Mr. Williams had made requests on several occasions but was never granted leave despite the Company having the fiduciary responsibility of approving and granting same. The Consultant also submitted that Mr. Williams after contending that all outstanding vacation leave should be addressed, awaited the Company's records in respect of his leave history, but eight months after the request was made, no records were produced.

He further submitted:

- There was no inference within the law that would exclude Mr. Williams from his entitlement for leave as stipulated under Section 5(1) and Section 7(1)(a) of the Holidays with Pay Order (1973).
- The Company was in breach of the law when it failed to pay Mr. Williams for his outstanding vacation leave entitlement.
- The Company is required to keep records relating to the granting of leave to all its employees.

DELIBERATIONS:

The Tribunal in its deliberations took careful note of the following:

- Mr. Williams who was employed to A. E. Parnell and Company Limited tendered his resignation by way of letter dated March 11, 2013 to be effective on March 31, 2013.
- The Company acknowledged his resignation and granted him a gratuity payment of \$1,500,000.
- Mr. Williams in his letter of resignation made no mention of outstanding vacation leave.
- Mr. Williams by letter dated April 4, 2013 advised the Company that his records did not reflect that he was granted holiday with pay (vacation) for the period spanning December 1982 and at least December 2003.
- The Company by letter dated April 23, 2013 wrote advising Mr. Williams that “.....there are no records on your personal file to indicate that you were prevented from proceeding on vacation at any time.”
- Mr. Williams again wrote to the Company by letter dated April 25, 2013 in which he stated, “I will reiterate that I was not granted a holiday with pay (vacation) for the period spanning December 1982 to December 2003 and am due to receive payment for same.”
- The Terms of Reference stated that the dispute was “... over his claim for vacation leave pay for the duration of his employment ...” However, evidence was produced to show that Mr. Williams was granted or paid salary in lieu of vacation leave for some of the years.

- For example, the Company on July 30, 1992, wrote to the United States Embassy advising that Mr. Williams would be proceeding on vacation leave from August 10, 1992 and was due to return to work on August 31, 1992 and requesting that he be granted a visa that would allow him to enter the United States of America. Based on this letter, the Tribunal agreed that to doubt the authenticity of what was stated would be tantamount to saying that the Company was making false statements to the Embassy.
- Evidence was also produced to indicate that Mr. Williams had received payment in lieu of vacation leave in years 2004, 2005, 2008, 2009, 2011 and 2012, and that he was on leave overseas in 2010 and was recalled consequent on the death of the Company's Administrator.
- The Company was asked to produce the letter/contract of appointment issued to Mr. Williams setting out the terms and conditions of his employment but failed to do so.

CONCLUSION:

The Tribunal concluded that for Mr. Williams to have worked from 1982 to 2003 and not made any application for vacation leave showed a variation from normal worker behaviour and that he was not familiar with Section 6(ii) of the Labour Relations Code which states – “The worker should familiarize himself of the terms of his contract, and in particular any procedure for the dealing with grievances, and abide by them ...”

However, the right of a worker to vacation leave is clearly stated in Section 3(1) of the Holidays with Pay Act:

“3(1) Any worker, other than a casual worker, who works for any employer on not less than 110 days in any qualifying year shall be granted a holiday with pay by that employer in respect of that qualifying year.”

Sections 11(1) and 11(1)(e) of the Act also stipulates:

“11(1) Every employer shall keep a record showing, as respects each worker employed to him—

11(1)(e) the remuneration paid during the periods of such holiday with pay and sick leave with pay.”

The Company's records produced in relation to 11(1)(e) were only in respect of some of the years after 2003.

The Tribunal noted the statement in the Company's letter of April 23, 2013 to Mr. Williams which stated in part, "...In addition there are no records on your personal file to indicate that you were prevented from proceeding on vacation leave at any time." The Tribunal, however, was not presented with evidence of Mr. Williams being paid salary in lieu of leave for the years up to 2003, except in the case of year 1992. With respect to the years after 2003, the Company produced evidence to show that he was paid salary in lieu of leave for the years 2004, 2005, 2008, 2009, 2011 and 2012.

The Tribunal opined that it was logical to conclude that Mr. Williams was granted vacation leave or paid salary in lieu thereof for the other years since 2003, especially, bearing in mind that his original claim for the non-payment of outstanding vacation leave was for years 1982 to 2003.

FINDINGS:


The Tribunal found that the onus was on the Company to prove that Mr. Williams was granted and, or paid for vacation leave during the entire period of his employment. The Company failed to do so.

AWARD:

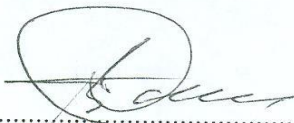
The Tribunal awards that Mr. Williams be paid fifty (50) weeks' pay in lieu of this vacation leave and the attendant allowances for which he would have been eligible during vacation leave.


DATED THIS 19th DAY OF MARCH 2015.


Witness:


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




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


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


.....
Mr. Clinton Lewis
Member