

INDUSTRIAL DISPUTES TRIBUNAL
Dispute No: IDT 10/2019

SETTLEMENT OF DISPUTE

BETWEEN

AJAS LIMITED

AND

MR. OTIS WALLACE

AWARD



I.D.T. DIVISION

MISS MARSHA SMITH - CHAIRMAN
MR. LESLIE HALL, JP - MEMBER
MR. CLINTON LEWIS - MEMBER

AUGUST 13, 2020

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INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

AJAS LIMITED
(THE COMPANY)

AND

MR. OTIS WALLACE
(THE AGGRIEVED WORKER)



REFERENCE:

By letter dated March 22, 2019, 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 describe therein:-

The Terms of Reference were as follows:

“To determine and settle the dispute between Ajas Limited on the one hand, and Mr. Otis Wallace 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:

- Miss Marsha Smith - Chairman
- Mr. Leslie Hall J.P. - Member, Section 8 (2) (c) (ii)
- Mr. Clinton Lewis - Member, Section 8 (2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The Company was represented by

- Ms. Angela Robertson - Attorney-at-Law
- Ms. Kimberly Morris - Attorney-at-Law

In attendance were:

- Colonel Norman Tomlinson - Head of Security
- Mr. Christopher Bond - Human Resources Manager



The **Aggrieved Worker** was represented by:

- Mr. Howard Duncan - Industrial Relations Consultant

In attendance:

- Mr. Otis Wallace - the Aggrieved Worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during nine (9) sittings held between September 2, 2019 and March 3, 2020.

BACKGROUND TO THE DISPUTE:

AJAS Limited offers aviation services. Its offices are located at Norman Manley International Airport (NMIA) in Kingston and the Sangster International Airport (SIA) in Montego, Bay, Saint James (*hereinafter referred to as the Company*). Mr. Otis Wallace (*hereinafter referred to as the Aggrieved Worker*) was employed to the Company on November 6, 2010 as a ramp

attendant. By way of letter dated April 12, 2013 the employment of the Aggrieved Worker was terminated. The letter is set out below:-

"April 12, 2013

*Mr. Otis Wallace
Gunns Drive
Granville
St. James*



Dear Mr. Wallace,

On January 24, 2013 your Restricted Airport Pass (RAP) was seized by the Airport Police and subsequently given to MBJ Airports Ltd. Thus denying you access to the restricted areas of the Airport and effectively preventing you from carrying out your job functions.

We had hoped that the investigations would have been completed by now and you would have been able to retrieve your RAP, however to date you have not been able to do so, and there is no indication of a date for closure.

The Company therefore has no option but to terminate your contract with immediate effect, April 13, 2013 and fill your vacant position.

Please contact the Airport Administrative/ Accounting office to collect your Final pay for Vacation Leave owed.

All Company property in your possession including Locker Keys are to be returned to Management before receipt of your final pay.

Please do not hesitate to contact the undersigned or your Station Manager should you have any queries.

Yours sincerely,

Michael Ireland

Human Resource & Information Systems Manager

c.c. Mr. Brian Wiggan"

The Aggrieved Worker protested the termination of his employment. The matter was referred to the Ministry of Labour and Social Security. No resolution was reached, and the dispute was sent to the Industrial Disputes Tribunal for determination and settlement.

THE COMPANY'S CASE:

The Company through its two witnesses Colonel Norman Tomlinson, the Company's Head of Security and Mr. Christopher Bond, Board Member and Human Resources Consultant led evidence that the Aggrieved Worker was employed on November 26, 2010 as ramp attendant at its operations at the Sangster's International Airport (SIA) in Montego Bay in the parish of Saint James. The Aggrieved Worker's contract of employment, contained a condition of employment requiring him to obtain and hold a valid airport security I.D or Restricted Area Pass (RAP). This pass is issued by the MBJ Airports Limited, the operators of Sangster's International Airport. The MBJ withdrew the Aggrieved Worker's RAP on January 25, 2013. The Aggrieved Worker was required to report to the airport police and submit a report. The Company terminated the employment of the Aggrieved Worker by way of letter dated April 12, 2013 on the basis that the Aggrieved Worker had no valid Airport Security I.D. and was therefore unable to perform his job functions. The MBJ Airports Limited in a letter dated September 23, 2013, informed the Company of the following:

"In accordance with established Security Protocols, MBJ as Airport Operators may not issue a RAP to someone from whom the police had withdrawn such RAP, unless the police thereafter, or the Ministry of National Security, provides written correspondence that such individual is cleared for the restorations of access privileges into the controlled and restricted areas of the Airport."

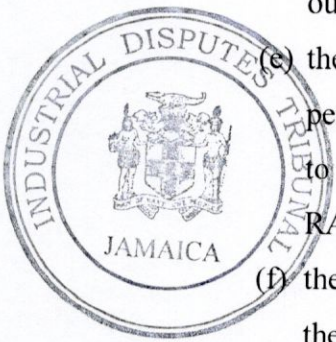
The Aggrieved Worker appealed the termination of his contract by way of letter dated August 18, 2014. The appeal was held on February 6, 2015. The Company informed the Aggrieved Worker of the outcome of the appeal by way of letter dated February 19, 2015, which was that the Company did not breach the Aggrieved Worker's contract of employment but instead, complied with condition of employment relating obtaining and holding a valid Airport Security I.D, (RAP). The Aggrieved Worker was not terminated due to disciplinary reasons. The investigation was done by the police and not the Company.



THE COMPANY'S CONTENTION:

1. In summary, the Company maintains that:

- (a) the revocation of the Aggrieved Worker's RAP was an event which brought the contract of employment to an end automatically and this was a consequence of which the Aggrieved Worker was fully aware when he signed his contract of employment.
- (b) RAP's are issued by the relevant Airport Authority and, as per the instructions on each RAP, remain the property of the issuing Airport Authority, and may be withdrawn at any time, without specified reason by the issuing Airport Authority or other authorized person (Police or Ministry of National Security)
- (c) the revocation was an exceptionally grave circumstance which prevented the Aggrieved Worker from performing his obligations under the contract of employment;
- (d) the Company in the circumstances terminated the Aggrieved Worker's contract of employment in order to regularize their contractual relationship. The Company by its actions was therefore not in breach of the principles of natural justice as outlined by the AAJ case nor Section 22 of the Code;
- (e) the Company notwithstanding the fact that the Aggrieved Worker was unable to perform his contractual obligations, and despite it not having any legal obligation to do so, kept him as an employee for three months after the revocation of his RAP, hoping for a solution to the issue.
- (f) the Company having no alternative location to move the Aggrieved Worker to, therefore had no alternative but to comply with its legal obligations and terminate the employment. The provisions of the Labour Code would not be applicable.
- (g) a finding by the Tribunal that the Company's decision to terminate the Aggrieved Worker's contract of employment was unjustified/unfair would place the Company and all other businesses operating at the airports and ports in a position where they would be in breach of applicable legislation. Given the fact that the Airport and the Port Authorities and the Ministry of National Security have the right in their absolute discretion to grant or withhold access to restricted areas at the relevant locations

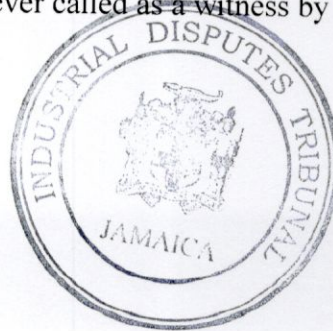


THE AGGRIEVED WORKER'S CASE:

The Aggrieved Worker gave evidence that on January 25, 2013 his manager Mr. Antonio Dobson took his RAP and asked him to report the Summit Police Station. He attended the police station and gave a report to Inspector Mark Heartherton. He requested the status of his job from the Company. He was given a letter of termination on April 12, 2013. After he received the letter, he went to see Inspector Heartherton, who told him that the investigation was completed and that he had sent a report and thought that he (the Aggrieved Worker) had gotten back his pass, as he found no evidence against him. The last time he got paid was the last week in January. He stated that his termination was unfair and that the Company should have done more to assist him with getting back his pass. He agreed that without a RAP he was unable to perform his job functions for which the company employed him.

THE AGGRIEVED WORKER'S CONTENTIONS:

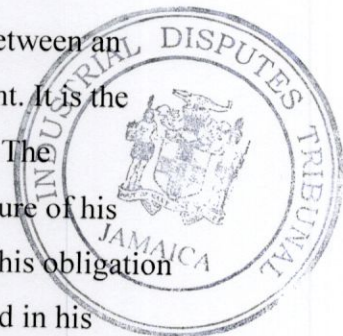
1. The Aggrieved Worker cannot be at fault by not having his RAP, because he sat the test and gained the RAP. The Police said that he found no evidence against him, so by now he thought he would be back at work. In relation to any payment he may have received since January 2013. The Aggrieved Worker provided proof that no payment was received. The Aggrieved Worker argued that he was terminated without any offence committed. He was terminated without due process being followed. The Aggrieved Worker did not fail to hold a valid RAP., it was taken away from him and he did nothing wrong. There was no adherence to the provision of due process or the principles of natural justice.
2. That the Aggrieved Worker was successful on more than one occasions in passing the test and held his RAP as a requirement to work with the Company. His RAP was taken from him without any proven breach. The Aggrieved Worker complied with the instructions given to him by his employer to report to the police.
3. That the managers who participated in the withdrawal of the RAP or termination of the Aggrieved Worker were not called as witness before the Tribunal by the Company. The police who conducted the investigation, was never called as a witness by the Company to assist the Tribunal.



4. That the police advised the Aggrieved Worker that the investigation was complete and that the report was sent to the Company. No one from the Company contacted him with the view to him returning to work.
5. The Aggrieved Worker was terminated by the Company without due process and the basic principles of natural justice. The Labour Relations Code, section 2,5,6,19 and 22 were breached by the Company. The Aggrieved Worker committed no breach.
6. The Aggrieved Worker's termination should be classified as unjustifiable and unfair. The conduct of the Company cannot be accepted as it had an obligation to assist the Aggrieved Worker to retrieve his pass and allow him the right to perform his duties which he had an obligation to perform under his contract of employment. He could have returned to work if the Company assist him.
7. The Tribunal should find that the Aggrieved Worker was terminated unjustifiably and award him compensation for the period January 26, 2013 to the date of the award and reinstate him. That the Tribunal should award the Aggrieved Worker a sum of \$3,000,000.00 if he is not reinstated.

THE TRIBUNAL'S RESPONSE AND FINDINGS:

1. The Aggrieved Worker did not have a Restricted Area Pass (RAP) at the time of his termination on April 12, 2013. His RAP was withdrawn more than two months before by MBJ Airports Limited the issuer of the pass on January 25, 2013. MBJ Airports Limited did not the return the RAP. Once the RAP was taken by MBJ Airports Limited, the Aggrieved Worker was unable to perform his duties under his contract of employment.
2. The Aggrieved Worker's failure to hold a valid Airport Security ID, (RAP) was a breach of the conditions of his employment. The contract of employment set out that the consequence of this breach was termination of his employment.
3. Section 6 of the Labour Relations Code sets out that the legal relationship between an employer and worker is determined by the individual contract of employment. It is the worker's responsibility to familiarize himself with the terms of his contract. The Aggrieved Worker in this case had a special obligation arising out of the nature of his employment to hold a valid Airport Security ID (RAP). His failure to fulfil this obligation was a breach of Section 6 (iii) of the Labour Relations Code and also resulted in his



employment contract being dissolved by operation of law; independent of the volition or intention of the parties. When the Company sought to regularize its relationship with the Aggrieved Worker by way of letter dated April 12, 2013, it was putting into effect what was clearly set out in the contract. In the circumstances, the Tribunal finds that the Aggrieved Worker's employment was justifiably terminated.

AWARD:

In accordance with Section 12 of the Labour Relations and Industrial Disputes Act, the Tribunal awards that Mr. Otis Wallace was justifiably dismissed by his employer.

DATED THIS 13th DAY OF AUGUST 2020



Marsha Smith

Miss Marsha Smith
Chairman

Leslie Hall

Mr. Leslie Hall, J.P.
Member

Clevis

Mr. Clinton Lewis
Member

Witness:

Gary Lediard

Mr. Gary Lediard
Secretary to the Division