

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 26/2014

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SETTLEMENT OF DISPUTE

BETWEEN

ASHOK MEDICAL CENTRE

AND

MS. ANEIKA RAGBAR

AND THE

*AWARD*

I.D.T. DIVISION

MR. DONOVAN HUNTER - CHAIRMAN

MR. TREVOR GRAHAM - MEMBER

MR. CLINTON LEWIS - MEMBER

JANUARY 2015

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**ASHOK MEDICAL CENTRE  
(THE COMPANY)**

**AND**

**MS. ANEIKA RAGBAR  
(THE AGGRIEVED WORKER)**

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**REFERENCE:**

By letter dated June 25, 2014, 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 Ashok Medical Centre on the one hand and Miss Aneika Ragbar on the other hand over the termination of her 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. Donovan Hunter	-	Chairman
Mr. Trevor Graham, 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:

Miss Stacey P. Knight	-	Attorney-at-Law
Dr. Ashok Kumar Justi	-	Principal of Ashok Medical Centre

The **dismissed worker, Miss Aneika Ragbar** was represented by:

Mr. Howard Duncan	-	Industrial Relations Consultant
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In attendance:

Ms. Aneika Ragbar	-	the Dismissed Worker
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**SUBMISSIONS AND SITTINGS:**

Briefs were submitted by both parties who made oral submissions during five (5) sittings held between September 9, 2014 and January 7, 2015.

**BACKGORUND**

Ashok Medical Centre is a registered business operated by Dr. Ashok Kumar Justi which provides medical services to the community of Buff Bay in the parish of Portland, Jamaica.

The centre employs three (3) persons, a Receptionist, an Accountant and a Janitor. Ms. Aneika Ragbar was employed as a Receptionist from December 2009 to December 23, 2013. Her responsibilities consist of setting dates for appointments and the collection of fees from patients.

On the 11<sup>th</sup> December 2013, she received a termination letter that reads as follows:

*'To Ms. Aneika Ragbar*

*Your employment to this centre will be terminated with effect from 23<sup>rd</sup> December 2013. Your two (2) weeks' notice of termination commences the 9<sup>th</sup> December 2013.*

*Reasons for your termination are as follows:*

- 1. Your failure to sign employment contract offered to you on the grounds of inadequate salary*
- 2. Irrevocable breakdown in working relationship causing serious strain on both sides*

*You will be paid for 4 years vacation leave = 2 months @ \$24,000.00 per month = \$48, 000*

*Salary for December = 24, 000*

*Total \$72, 000*

*This sum is to be paid on the 23.12.2013*

*...'*

Ms. Ragbar protested the dismissal and attempts were made to settle the dispute at the local level and the Ministry of Labour and Social Security without success. The matter was subsequently referred to the Industrial Disputes Tribunal for determination and settlement.

### **EMPLOYER'S CASE:**

Ms. Ragbar was employed by way of an oral contract as a Receptionist in December 2009. She was informed of her responsibilities which required her to fix appointments for patients and collecting fees for services rendered.

Sometime during the contract, a change in her conduct began, causing some concern to Dr. Justi, the sole operator of the business and Ms. Ragbar's immediate Supervisor. Her misconduct was observed in three (3) instances:

- (1) Ms. Ragbar began taking her son to the centre during office hours until closing hours; this behaviour became a concern thus causing unnecessary interruption in the office.

(2) Ms. Ragbar who was given keys to the office also opened the office outside the designated office hours.

(3) Ms. Ragbar was using the centre as a place for selling pregnancy kits for her own benefit without the knowledge or consent of her employer.

In the latter part of 2013, Dr. Justi invited Ms. Ragbar to his office to discuss the above issues. He informed her that he could not allow her to bring her son to work and asked her to cease and desist from this practice. Her response was that at other work places employees were allowed to take their children to work hence, she refused to carry out his directive.

Dr. Justi explained to her that opening the office outside of the working hours could expose him and make him liable for incidents that occur within those hours. He asked her to stop but she refused. Dr. Justi told Ms. Ragbar he did not approve of her selling pregnancy tests on the premises. However, she continued to do this especially outside the office hours.

In order to regularise the situation and establish clear standards, an employment contract was prepared and signed by Dr. Justi dated December 1, 2013.

Included in the contract were the issues that were of concern:

1. Office hours 12noon – 7pm, employee will not conduct any personal business on the premises
2. Will not entertain family or friends in the office.

Ms. Ragbar refused to sign the contract. It was then that a decision was taken to terminate her services effective 23<sup>rd</sup> December 2013 by letter dated December 7, 2013 and was signed as being received the 11<sup>th</sup> December 2013. However, under cross examination she said she received the letter on the 9<sup>th</sup> December 2013.

By letter dated December 7, 2013, Ms. Ragbar made a claim for vacation leave for a period of four (4) years that was honoured on December 23, 2013.

## **EMPLOYEE'S CASE**

*The Aggrieved worker contends:*

- that the services of Ms. Aneika Ragbar was terminated without her being charge for any offense;
- she was not offered the right to representation;
- that Ms. Ragbar had the right to claim her vacation leave;
- her termination breached the Labour Relations Code and the rules of natural justice;
- that the Tribunal finds that Ms. Aneika Ragbar was terminated unfairly and unjustifiable and that she be reinstated in her job without loss of pay.

## **TRIBUNAL'S RESPONSE**

Although Ms. Ragbar's termination was due to her refusal to sign a new contract of employment the dispute was rooted in her questionable conduct in three (3) areas:

- (a) having her son with her on the job
- (b) opening the office outside the office hours
- (c) selling pregnancy kits on the job.

However, Dr. Justi in evidence said he terminated her service not because of what she did, but because she refused to sign the contract.

### **Refusal to sign the contract**

Ms. Ragbar had every right not to have signed a contract that was varied from the one she had been working under for the past four (4) years.

In reference to the matter the Tribunal referred to *Employment Law in Practise-Inns of Court School of Law pages 53-54*

*"The basic principle is that no variation is effective without agreement and will indeed constitute a breach of contract.*

*Unilateral variation is seen as a breach which leaves the contract intact and gives the employee a choice of resigning, or claiming constructive dismissal or arguing that the original terms of the contract still apply."*

Ashok Medical Centre breached the contract between itself and Ms. Ragbar when the decision to dismiss her was taken because she refused to agree with the proposed contract that was varied from the established one.

Secondly, the proposed contract was a fixed contract that would have began 1<sup>st</sup> December, 2013 through 30<sup>th</sup> November, 2014, while, the existing contract was an open ended one (that is for an indefinite period). Hence, nothing was mentioned about her four (4) years service that she had rendered to the centre under the existing contract.

### **Were the principles of natural justice ignored?**

In dealing with this matter the Tribunal referred to *Section 3 of the Labour Relations and Industrial Disputes Act (LRIDA)* which recognised the Labour Relations Code that contain guidelines for the purpose of promoting good industrial relations.

*Section 3 (4) of the LRIDA* speaks to the influence of the Code in dealing with dispute both at the workplace and the Tribunal. It states:

*“A failure on the part of any person to observe any provision of a labour relations code which is for the time being in operation shall not of itself render him liable to any proceeding; but in any proceedings before the Tribunal or a Board any provision of such code which appears to the Tribunal or a Board to be relevant to any question arising in the proceedings shall be taken into account by the Tribunal or Board in determining that question.”*

The operative word in the above section is *shall*.

The Tribunal now turns to *Section 22 of the Labour Relations Code*.

#### *Disciplinary Procedure*

- (1) Disciplinary procedures should be agreed between management and worker representatives and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:

- (a) specify who has the authority to take various forms of disciplinary action, and ensure that supervisors do not have the power to dismiss without reference to more senior management;
- (b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;
- (c) give the worker the opportunity to state his case and the right to be accompanied by his representatives;
- (d) ...
- (e) ...'

### **THE TERMINATION OF MS. RAGBAR**

Ms. Ragbar was given a contract to sign which varied from the oral contract which had governed the relationship between herself and Ashok Medical Centre. She refused to sign it although the reasons given as to why she refused varied between the parties.

None of the above stages of the Disciplinary Procedure were implemented. Ms. Ragbar should have been given in writing the specific charges which she would be required to respond to and invited to attend a hearing along with a representative before being unceremoniously terminated.

#### **Comments**

Small a company as it is, the management has a responsibility to inform itself with the relevant pieces of labour legislation that is necessary to build and sustain the integrity of the management and staff. It is not proper industrial relations practice not to have granted paid vacation for four (4) years.

Based on all the facts gleaned, the Tribunal finds that the dismissal of Ms. Ragbar was unjustifiable and awards accordingly.

AWARD

The Tribunal awards that Ms. Ragbar be paid eight (8) months salary as compensation.

DATED THIS 29<sup>th</sup> DAY OF JANUARY, 2015

*D Hunter*

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Donovan Hunter  
Chairman

*Trevor Graham*

.....  
Trevor Graham  
Member

*Clinton Lewis*

.....  
Clinton Lewis  
Member

Witness:

*Royette Creary*

.....  
Royette Creary  
Secretary to the Division

