

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 32/2014

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SETTLEMENT OF DISPUTE

BETWEEN

BARNETT CLINIC

AND

JOYLYN HUNTER

AND THE

*AWARD*

I.D.T. DIVISION

MR. CHARLES JONES, CD JP - CHAIRMAN

MR. LESLIE HALL - MEMBER

MR. DWIGHT NELSON - MEMBER

NOVEMBER 19<sup>th</sup>, 2015

IDT 32/2014

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**BARNETT CLINIC  
(THE COMPANY)**

**AND**

**JOYLYN HUNTER  
(THE AGGRIEVED)**

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**Reference**

By letter dated April 15, 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 Joylyn Hunter on the one hand and The Barnett Clinic 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. Charles Jones, CD, JP. - Chairman
- Mr. Leslie Hall - Member, Section 8(2) (c) (ii)
- Mr. Dwight Nelson - Member, Section 8(2) (c) (iii)

**Representatives of the Parties**

The **Company** was represented by:

- Ms. Debbie-Ann Gordon - Attorney-at-Law
- Ms. Raquel Gordon - Attorney-at-Law (In training)
- Ms. Joan Dixon - Administrator of Barnett Clinic

The **Aggrieved** was represented by:

- Mr. Howard Duncan - Industrial Relations Consultant

In attendance was Miss Joylyn Hunter - Aggrieved worker

**Background to the Dispute**

Miss Joylyn Hunter was employed to the Barnett Clinic in the position of practical nurse/receptionist. She was suspended from duty with effect from May 2, 2011 and her letter of suspension stated that she had been involved in a number of incidents and that the period of suspension would allow the Clinic to investigate these incidents.

On her return from suspension on May 19, 2011, she received a letter of the same date, terminating her service with the Barnett Clinic with effect from May 20, 2011.

She contacted the Ministry of Labour and Social Security and following the Ministry's intervention received a payment from the Barnett Clinic via the Ministry. Miss Hunter again contacted the Ministry of Labour and Social Security and made a further claim for compensation on the grounds of redundancy. The Ministry's advice was that there was no case for this claim. Miss Hunter then made a further request to the Ministry citing unjustifiable dismissal. Four (4) conciliatory meetings were held at the Ministry; however the parties 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 in accordance with Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act of 1975.

### **Barnett Clinic's Case**

Ms Debbie Ann Gordon, the Attorney representing the Barnett Clinic submitted that Miss Hunter was employed in 1998 by the late Dr Barrington Dixon. The appointment was of an informal nature and Miss Hunter's contract of service was verbal. The Attorney further submitted that Miss Hunter's employer was Dr Dixon and not the Barnett Clinic. She stated also that the Barnett Clinic was not registered as a business name with the Companies Office of Jamaica until March 29, 2012, which was after the termination of Miss Hunter's appointment.

Miss Joan Dixon, Administrator at the Barnett Clinic was called as a witness. Miss Dixon testified that consequent to various complaints against Miss Hunter, she met and spoke with Miss Hunter on May 2, 2011 and requested her to submit a report with regard to the allegations. Miss Hunter was also suspended from duty to enable investigation into the complaints. Miss Dixon further stated that Miss Hunter submitted a report in which she admitted to making allegations against other employees. Miss Dixon advised that this report was lost at the time of a burglary, and that despite attempts the Clinic was unable to obtain a copy.

Further, the Attorney submitted that Miss Hunter was neither made redundant nor was she unjustifiably dismissed. She said that Miss Hunter had stated that she was unable to continue working with Dr Dixon and staff members of the Clinic, and had in effect resigned from her post.

The Attorney also submitted that the issue of a hearing did not arise.

On the advice of the Ministry of Labour and Social Security compensation was made by the Clinic to Miss Hunter. The amount was determined by the Ministry and it was the understanding that this sum represented settlement of all outstanding liabilities.

### **Case of the Aggrieved**

Mr Howard Duncan, Industrial Relations Consultant representing Miss Hunter contended as follows:

- 1) That the service of Nurse Joylyn Hunter was terminated without her being charged for any offence.*
- 2) That she was not afforded the right of representation.*
- 3) That Nurse Hunter was not afforded the right to face her accusers and to attend a fair and proper disciplinary hearing that is compatible to the provisions of the rule of Natural Justice or the Labour Relations Code.*
- 4) That her termination is a breach of the Labour Relations Code and the rule of Natural Justice.*
- 5) That the tribunal finds that Nurse Joylyn Hunter was terminated unfairly and unjustifiable and that she be reinstated in her job without any loss of pay.*

Miss Hunter was called as a witness. She testified that her employer was the Barnett Clinic. She said that in May 2011 she was suspended for two weeks because of certain allegations made against her and was told to wear civilian clothes on her return to work. On her return on May 19, 2011 she was handed a letter terminating her services. She said she had not written, nor submitted any report to Miss Dixon.

Miss Hunter in her evidence admitted receiving a cheque from the Ministry as coming from the Barnett Clinic, but said that there was no accompanying letter stating the details of the payment. She stated that as far as she was aware it was a payment for outstanding leave.

### **Tribunal's Deliberations**

The Tribunal gave consideration to the submission of the Attorney representing Barnett Clinic, that Miss Hunter was employed to Dr Barrington Dixon and not to the Barnett Clinic as the Clinic was not registered as a business name until March 29, 2012. Members found it instructive however; that the only documents produced on behalf of Miss Hunter's case were the letters of suspension and termination issued on the Barnett Clinic letterhead.

Members noted the informal way in which Miss Hunter's appointment was effected and the fact that there was neither a letter nor a written contract of employment. Members noted however that the letter of termination produced in evidence indicated that she was in the service of the Barnett Clinic.

The sequence of events was examined:

- In early 2011 certain incidents at the Clinic involving Miss Hunter were reported to Miss Joan Dixon, Administrator.
- Miss Hunter was suspended from work to allow for investigations to be conducted into the reported incidents. Miss. Hunter took the letter to the Ministry of Labour for advice.
- In May 2011 it was stated that Miss Dixon requested a written report from Miss Hunter. Miss Dixon stated that Miss Hunter submitted a six- (6) page report, but that the Clinic's copy was lost.
- On Miss Hunter's return to work on May 19, 2011 she was presented with a letter of the same date, terminating her services with effect from May 20, 2011.
- Miss Hunter contacted the Ministry of Labour and Social Security regarding her suspension from duty and subsequent dismissal and received compensation, reportedly calculated by the Ministry.

- Sometime after, she again contacted the Ministry regarding redundancy payments. This request was not successful and she then sought compensation on grounds of unjustifiable dismissal and the matter was reopened.

During the hearing only two exhibits were presented and admitted. These were the letter of suspension and the letter of termination. Members therefore relied on the oral evidence of Misses Dixon and Hunter.

The Tribunal noted that Miss Hunter testified that she knew nothing of the Report which Miss Dixon testified that she - Miss Hunter - had written. She also testified that she had received no written statement setting out the reasons for the payment from the Barnett Clinic following the first intervention by the Ministry of Labour and Social Security. Miss Hunter further testified that she was suspended for two weeks and directed to wear civilian clothes on her resumption. She returned at the end of this period of her own volition. This statement the Tribunal found difficult to understand as there was no period stated in the letter of suspension, and if indeed the suspension was for two weeks she should have returned on May 16 and not May 19 as she said she had done. Members found these testimonies difficult to accept as the truth.

In the determination of this matter, after due consideration of all the facts the Tribunal noted the following:

- No disciplinary charges were preferred against Miss Hunter.
- She was not afforded an opportunity to defend herself.
- Barnett Clinic did not take into consideration the Labour Relations Code which makes provision for the rights of employees.

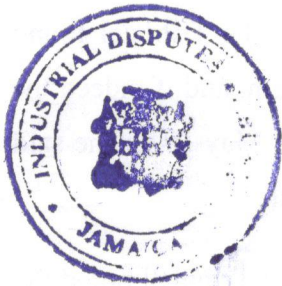
It is for these reasons that the Tribunal finds that the Barnett Clinic erred in the manner in which Miss Hunter's dismissal was effected. This therefore rendered Miss Hunter's dismissal to be unjustifiable.

The Tribunal also noted Miss Hunter was paid a sum by the Barnett Clinic, the basis for this was not clear.

**Award**

The Tribunal has decided not to order reinstatement. In accordance with Section 12(5) (c) (ii) of the Labour Relations and Industrial Disputes Act, the Tribunal hereby awards that Miss Hunter be paid Seventy Thousand Dollars (\$70,000.00) as compensation.

DATED THIS 19<sup>th</sup> DAY OF NOVEMBER, 2015



Charles Jones, CD JP  
Chairman

Leslie Hall  
Member

Dwight Nelson  
Member

Witness: 

Keisha Mighty-Brown (Mrs.)  
Acting Secretary to the Division