

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 32/2015

SETTLEMENT OF DISPUTE

BETWEEN

BERGER PAINTS JAMAICA LIMITED

AND

UNION OF CLERICAL ADMINISTRATIVE AND SUPERVISORY
EMPLOYEES

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

SEPTEMBER 22, 2016

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**BERGER PAINTS JAMAICA LIMITED
(THE COMPANY)**

AND

**UNION OF CLERICAL ADMINISTRATIVE AND SUPERVISORY EMPLOYEES
(THE UNION)**

REFERENCE:

By letter dated September 18, 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 Berger Paints Jamaica Limited on the one hand and the Union of Clerical Administrative and Supervisory Employees on the other hand over the termination of the employment of Evadine Murray on the grounds of redundancy.”

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. Gregory Reid | - | Attorney-at-Law |
| Mr. Huron Gordon | - | Financial Controller and Company Secretary |
| Mrs. Angela Scott-Brown | - | Human Resource Manager |

The **Union** was represented by:

- | | | |
|----------------------|---|-----------|
| Mr. Vincent Morrison | - | President |
|----------------------|---|-----------|

In attendance were:

- | | | |
|--------------------|---|-----------------------|
| Ms. Evadine Murray | - | Aggrieved worker |
| Mr. Shaun Robinson | - | Acting Chief Delegate |
| Mr. Ivan Brown | - | Delegate |

SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties, thirteen exhibits presented and oral submissions made duration nine (9) sittings from February 11, 2016 to August 30, 2016.

BACKGROUND TO THE DISPUTE:

Berger Paints Jamaica Limited, whose core business is paint manufacturing, having decided to streamline its operations to make it more efficient, embarked on a programme of restructuring, which included redundancy. The Company and the Union participated in numerous consultations

in this regard. The abolition of the position of Receivables Clerk held by Ms. Evadine Murray resulted in the termination of her employment with effect from August 31, 2015 on the grounds of redundancy. Ms. Murray was the Union's Chief Delegate, and the termination of her employment resulted in strike action from August 31, 2015 to September 1, 2015. Consequently the Ministry of Labour and Social Security was asked to intervene.

Despite several attempts at conciliation, the dispute was not settled and consequently the Honourable Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal for settlement.

THE COMPANY'S CASE:

Mr. Gregory Reid, Attorney-at-law, represented the Company. The Company contended as follows:

- “1. That Ms. Murray was made redundant in accordance with the Employment Termination and Redundancy Payment Act.
2. That there was consultation with both Ms. Murray and the Union in accordance with the provisions of the Labour Code.
3. That there was more than adequate consultation with Ms. Murray and the Union with respect to the redundancy.
4. That in any event, given that the redundancy was a genuine redundancy; there can be no practical or legal basis for the Tribunal to seek to undo it.”

The Company called one witness, Mr. Huron Gordon, Financial Controller and Company Secretary. Through Mr. Gordon, the Company submitted that it had embarked on a programme of restructuring in 2015, to make its operation more efficient. This restructuring included the outsourcing of some positions such as Messengers and Forklift Operators. The positions of Credit Officer and Receivables Clerk were merged to form the new position 'Credit Collection Officer'. The Credit Officer position was vacant for about three years prior to the restructuring, however, the Receivables Clerk position was occupied by Ms. Evadine Murray, the Chief Delegate of the Union (UCASE).

Mr. Gordon stated that the Company had initiated consultation on the planned redundancy with the Union and meetings were held on July 9 and 30, and August 12, 2015. In the meeting of August 12, 2015 it was made clear to Ms. Murray that her position was to be made redundant effective August 31, 2015. Further discussions were held on August 18 and 19, 2015, between Ms. Murray and Management. He stated that during the discussions of August 18, Ms. Murray requested that the redundancy be delayed for three months to facilitate a personal matter. However, Ms. Murray failed to accept the conditions under which the Company would facilitate her request. In the circumstances, the effective date of the redundancy remained August 31, 2015.

On August 24 2016, Ms. Murray was advised by letter, of the redundancy of her position as Receivables Clerk. The relevant payments related to the redundancy were posted to her account by August 25, 2015.

Mr. Reid referred to the Union's statement that the redundancy was not discussed with them before hand and that it was not a true redundancy, resulting from hardship. He argued that the Union had no issue with the redundancy of other positions such as the Cost Accountant and the Colour World Technician which were part of the Bargaining Unit.

He further stated that the Union felt that because Miss Murray was Chief Delegate, her position should not have been made redundant unless first discussed with the Union. He said that this was only applicable in matters relating to disciplinary action. In addition, he said that the Union felt that the Company should have offered the newly created position to Miss Murray, although there was nothing preventing her from applying for the new job.

Mr. Reid stated that the redundancy, which was genuine, was carried out in accordance with practice and procedure as prescribed by laws of Jamaica. Therefore the dismissal of Ms. Evadine Murray by means of redundancy was justifiable.

THE UNION'S CASE:

Mr. Vincent Morrison, President of the Union, contended as follows:

- “Miss Murray’s position as Receivables Clerk remains with the Company.
- That it is grossly unfair that the two positions namely: Receivables Clerk and Credit Officer in which the employee has served satisfactory over the period of her engagement were absorbed and that the Company has not even considered giving her the opportunity to serve in the new position, even on a probationary period.
- The Company has not contradicted our position that:
 - Ms. Murray is an excellent employee,
 - She has an excellent record with the Company
- That she has the skills, the competence, the temperament and the capabilities to fill in the new position created by the merger.
- That Ms. Murray was not given the opportunity to apply for the new position.
- That the process of consultation in Ms. Murray’s case was indeed flawed and breached the Labour Code
- That in the past discussions would have been held with the Union Officer and the Company prior to the termination of the Chief Union Delegate’s employment. This is well established practice, understanding and convention at Berger Paint Jamaica Limited.”

Mr. Morrison further stated that the restructuring, was not genuine and was an afterthought of the Company. That was why it was only raised at the end of the meeting held on July 9, 2015 and although the Union had requested documentation on the proposed restructuring, these were never provided.

Mr. Morrison said that the Union said that he would be calling three witnesses but later seemed to have changed to two and called its first witness, the aggrieved, Ms. Evadine Murray. Ms. Murray testified that she had joined the Company in October 2000 and went on staff in 2005. She said that at no time had she expressed a desire to be made redundant. She admitted under cross examination by the Company’s Attorney, that there were consultations between the Union and Management about the redundancy exercise. She further stated that during the consultation

the Union objected to her position being made redundant. She also stated that in her opinion, consultation should result in both parties arriving at an agreement.

The Union said its other witness was unable to attend the Tribunal sittings, but had furnished a statement, which the Union wanted to tender as evidence. The Tribunal rejected the offer of the statement without the witness, as this would not allow for cross examination.

The Union reiterated that the merging of the two posts only added additional responsibilities to Miss Murray's original job and therefore she should have been given the new job bearing in mind that she was an excellent worker and that no evidence was provided at the Tribunal to prove otherwise.

The Union closed its case by saying that it had not seen any evidence to indicate that the redundancy programme was a genuine one and that the consultation process was flawed. It concluded that the Company's decision to terminate Ms. Evadine Murray's employment was unfair and unjustifiable and therefore she should be reinstated.

TRIBUNAL'S RESPONSE:

In determining whether or not Ms. Evadine Murray employment was justifiably or unjustifiably terminated by redundancy, the Tribunal asked itself the following questions:

- i. Was the Company's restructuring programme which included redundancy a genuine one?
- ii. Was there consultation with the Union over the redundancy process?

In answering these questions the Tribunal took the following into consideration:

- i. Evidence was provided that it was not Ms. Murray's post alone that was affected by the restructuring exercise. No evidence was presented that the Company had any ulterior motive in the determination of positions to be made redundant. Ms. Murray

admitted under cross examination that she had very good relationship with senior members of management before the redundancy exercise.

- ii. Evidence was provided to show that there were consultations between Management and the Union and between Ms. Murray and Management, before the position was made redundant. Meetings were held on July 9 and 30, and August 12, 18 and 19, 2015. In addition Ms. Murray testified that on July 17, 2015, Mr. Gordon held a meeting in the Accounts Department at which time he advised the staff that there would be a restructuring of the Department.
- iii. Members also noted the evidence of Ms. Murray, that in the meeting with Mr. Gordon and herself held on August 14, 2015, he had advised her that her position was being made redundant; and that he had discussed with her the possibility of an extension of the effective date of termination to facilitate the finalization of a personal matter affecting her. She further testified that she did not accept the company's conditions attached to this proposal.
- iv. That based on the evidence presented to the Tribunal the provisions of the Employment Termination and Redundancy Payment Act were satisfied by the Company.

FINDINGS:

The Tribunal finds that the post of Receivables Clerk occupied by Ms. Evadine Murray at Berger Paints Jamaica Limited was made redundant.

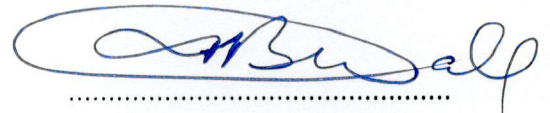
AWARD:

The Tribunal awards that the termination of the employment of Ms. Evadine Murray on the grounds of redundancy was justifiable.

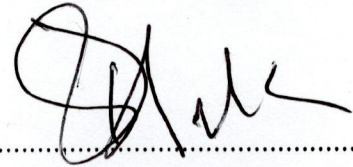
DATED THIS 22nd DAY OF SEPTEMBER, 2016



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



.....
Mr. Leslie Hall
Member



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

Witness: 

Nicola Smith Marriott (Mrs.)
Secretary to the Division