

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 63/2017

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## SETTLEMENT OF DISPUTE

BETWEEN

C.H. GAYLE COMPANY LIMITED T/A TRIPLE  
CENTURY SPORTS BAR

AND

MR. ANDREW BAILEY

AND THE

*AWARD*

I.D.T. DIVISION

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

JANUARY 8, 2020



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IDT 63/2017

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**C. H. GAYLE COMPANY LIMITED T/A TRIPLE CENTURY SPORTS BAR  
(THE COMPANY)**

**AND**

**MR. ANDREW BAILEY  
(THE AGGRIEVED WORKER)**

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**REFERENCE**

By letter dated January 3, 2017 the Honourable Minister of Labour and Social Security in accordance with Section 11 (1) 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 C.H Gayle Co Ltd t/a Triple Century Sports Bar and Mr. Andrew Bailey 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:

- |                       |   |                                |
|-----------------------|---|--------------------------------|
| Ms. 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:

- |                             |   |                 |
|-----------------------------|---|-----------------|
| Mr. Donovan St. L. Williams | - | Attorney-at-Law |
|-----------------------------|---|-----------------|

**In attendance were:**

- |                      |   |                 |
|----------------------|---|-----------------|
| Mr. Radcliffe Haynes | - | General Manager |
|----------------------|---|-----------------|

The **Aggrieved Worker** was represented by:

- |                  |   |                 |
|------------------|---|-----------------|
| Mr. Robert Moore | - | Attorney-at-Law |
|------------------|---|-----------------|

**In attendance was:**

- |                   |   |                  |
|-------------------|---|------------------|
| Mr. Andrew Bailey | - | Aggrieved Worker |
|-------------------|---|------------------|



## SUBMISSIONS AND SITTINGS

Briefs were submitted by both parties who made oral submissions during twelve (12) sittings held between March 15, 2018 and November 13, 2018.

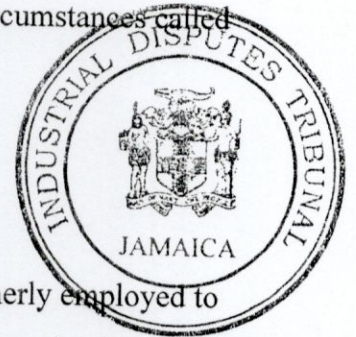
## BACKGROUND

1. C.H. Gayle Co. Ltd. t/a Triple Century Sports Bar (hereinafter referred to as the Company) operates a sports bar situated at 69-71 Knutsford Boulevard, Kingston 5 in the parish of Saint Andrew. Mr. Andrew Bailey (hereinafter referred to as the Aggrieved Worker) was

employed to the Company as a bartender. The Aggrieved Worker was sent on vacation leave at the end of March 2016 for two weeks and he did not resume work at the end of the vacation leave.

2. The Aggrieved Worker sought the assistance of the Ministry of Labour and Social Security to settle the dispute between himself and the Company as to the non-resumption of work after the expiry of his vacation leave. No resolution was reached, and the dispute was referred to the Industrial Disputes Tribunal for determination and settlement.
3. At the commencement of the proceedings before the tribunal, the Company did not admit to dismissing the Aggrieved Worker. The Aggrieved Worker was in those circumstances called upon to present his case first.

#### **THE AGGRIEVED'S CASE**



4. The Aggrieved Worker's first witness was Miss Nadine Bull, she was formerly employed to the Company as a janitor. She was fired from her job in July 2016 and her termination letter (Exhibit 1) was signed by Mr. Radcliffe Haynes, the Company's General Manager. She stated that she knew the Aggrieved Worker, as a Bartender at Triple Century Sports Bar. For some time up to July 2, 2016 she had not seen him at work. She enquired about his absence and was told that he was fired. She did not recall seeing the Aggrieved Worker at the bar in the uniform of another company. She was not told by the Aggrieved Worker nor her other co-workers that the Aggrieved Worker was employed somewhere else and that he was not returning to work at the bar. She stated that she was here at the Tribunal to tell the truth. During her cross-examination she reiterated that she was not bitter towards the company, she was at the Tribunal to assist by telling the truth.
5. The Aggrieved Worker was the final witness called in support of his case. He testified that he started working at Triple Century Sports Bar in May of 2014 as a Bartender. When he started to work, he did not sign a contract. He last worked at Triple Century Sports Bar on the last Monday in March 2016. He said he loved his job, describing it as being "*the most awesome job ever*". He had no personal issues with the General Manager, Mr. Radcliffe Haynes and said he would work at Triple Century Sports Bar again.

6. The Aggrieved Worker stated that on the last Monday night in March 2016, while he was at work, he received a call to go to the office. At the office he saw Mr. Radcliffe Haynes and another Manager, Ms. Denise McPherson. Mr. Haynes asked him how long he had been working at Triple Century Sports Bar and whether he had ever got any vacation leave. He told Mr. Haynes that he had been working there almost two years and that he had never got vacation leave. Mr. Haynes then told him that he was going to be sent on vacation leave immediately. A letter was read to him by Mr. Haynes which basically spoke to his contract being up. Mr. Haynes then gave him the letter. He further stated that Mr. Haynes told him that he was not to worry about what the letter said, as it was just a formality. Mr. Haynes also told him that it was the policy of Triple Century Sports Bar, that after every three months to send every worker on a two weeks' vacation leave. He was advised to send back his resume at the end of the two weeks' vacation leave and the Company would call him back for an interview and he would resume work.

7. The Aggrieved Worker said that at the end of the two weeks' vacation leave he sent his resume by email to the Company and he called the office and confirmed receipt of his email. He went to the Triple Century Sports Bar at the end of the two weeks to enquire when he could resume his job and he was told that he will have to wait until Mr. Haynes called him. After several weeks he received no phone call. He started to call more often. He spoke with the bar manager, Miss King and she told him that he could not restart as Mr. Haynes was the person that always did the interviews. Mr. Bailey said that he started to run low on funds and that he was not paid for his vacation. Eventually he went up to Triple Century Sports Bar to see if he was on the schedule. He did not see any time for him on the schedule and so he left.

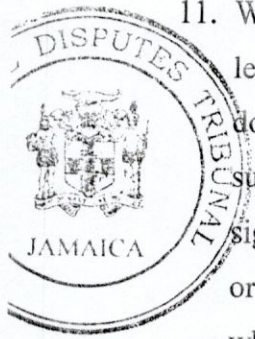
8. He called the office and spoke with another Manager, named Jody and told her that he had not received a call back nor his money for his vacation leave. After several calls he spoke to Mr. Haynes, and he told Mr. Haynes that he had not received a call about his employment nor his vacation leave money. Mr. Haynes told him that he would get his money the next day. Mr. Haynes disregarded the part about his employment.

9. Sometime during the period, he got a call from a friend, who told him that he had not seen him at Triple Century Sports Bar. He told his friend that he was on vacation leave for almost a month. His friend told him he was having a party and needed bartenders. He went to Triple Century Sports Bar after his friend's function to see if he could speak to the Bar Manager,



Miss King, to ask her the status of his employment. She was not there, and he called her on her cell phone, and she told him she had resigned from the Company and no longer worked there. He called the office again and was told that they got his email. He said that he had not received a phone call from the Company, and he was still waiting to hear from the Company.

10. He said the letter he received from Mr. Haynes was destroyed in a fire, but he remembered the contents to some extent. He saw a similar letter at the Ministry of Labour & Social Security. It was taken there by Mr. Haynes. The letter spoke about his contract coming to an end and that it was a pleasure working with him. He was shown a letter dated October 31, 2016 written by his Attorney-at-Law and addressed to the Company. The letter stated that Mr. Haynes had signed a letter of termination in or about April 1, 2016 and that the said letter purported to say that the Aggrieved was going on two weeks' vacation leave.
11. When asked about the contents of the letter of October 31, 2016, he said he assumed that letter he received in March 2016 was signed by Mr. Haynes based on the fact that every document from the Company had Mr. Haynes' signature. He said that the document submitted by the Company at the Ministry of Labour and Social Security was however signed by Denise McPherson. He could not recall if the submitted document was an original or a photocopy. The submitted document was a photocopy letter dated March 28, 2016 which stated that his contract had expired. The photocopy letter dated March 28, 2016 was admitted as Exhibit 2. The letter dated October 31, 2016 was admitted as Exhibit 3.
12. He denied attending the bar in the uniform of another company. He also denied that he told his co-workers he was working elsewhere. He denied indicating to the Company's management that he was working elsewhere. He said he had no personal grouse with the Company, and that he wished to work for the Company again.
13. During cross-examination he stated that he had several interviews for alternative employment, including bartender positions. It was not on his resume that he had worked at the bar. On his resume he put his last employment as being an event at the National Arena for Grace Kitchens in April 2016. His two weeks' vacation had already passed when he worked at the National Arena. He also freelanced at parties and barbeques. He admitted to working at the Constant Spring Golf Club as a bartender and a lifeguard and that he started working there at the golf club the ending of June 2016. While working at the golf club he



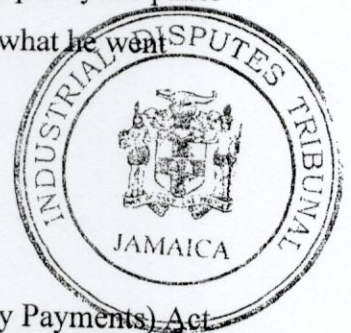
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wore a uniform with a logo on it. He said he was no longer working at the golf club and he stopped working there about the middle of October 2016. He said that he still worked with them on and off and that the last time he worked there was when they had an event in December 2017.

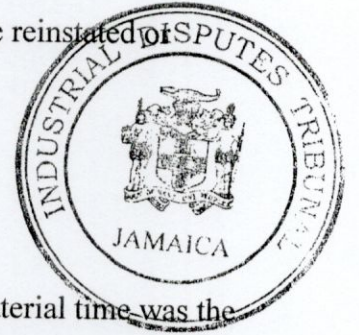
14. He said the email with his resume was sent to the Company's email address that was in the phone book and it was not addressed to anyone specific. He disagreed with the suggestion that Miss King did not work in the office and he also disagreed with the suggestion that Miss King was not his manager. It was put to him that Miss King did not manage the emails at the Company and his response to that suggestion was that he received a response from her and that he had a copy of the email. He insisted that he called Mr. Haynes in April 2016 and asked him about his employment and when he was informed to come back for an interview. He did what he was asked to do and at the end of two weeks he had someone send his resume for him to the Company. He disagreed with the suggestion that he did not send an email to the Company and also disagreed with the suggestion that he took employment at Constant Spring Golf Club and did not go back to Triple Century Sports Bar. To the suggestion that Mr. Haynes did not give him any letter about him not working at Triple Century Sports Bar anymore, the Aggrieved Worker responded by insisting that Mr. Haynes brought Exhibit 2 to the Ministry of Labour & Social Security.
15. When re-examined, the Aggrieved Worker said he did not see it as important to mention on his resume that he had worked at the Company. His response to a question put by the panel as to why he wanted to go back to the company to work, was that despite what he went through, he still wanted to work there as he loved it there.

#### **AGGRIEVED WORKER'S CONTENTIONS**

1. The Company breached the Employment (Termination and Redundancy Payments) Act and the Labour Relations and Industrial Disputes Act and the Labour Relations Code in that the company failed to justify the termination of the Aggrieved Worker's employment. The Aggrieved Worker was denied the right to due process which is a fundamental breach of the rules of Natural Justice.



2. The Tribunal should find that Exhibit 2, the photocopy letter dated March 28, 2016 was issued to the Aggrieved Worker on behalf of the Company.
3. Miss Nadine Bull and the Aggrieved Worker should be accepted as witnesses of truth.
4. The evidence of Mr. Radcliffe Haynes that the first time he saw Exhibit 2 is at the IDT should be rejected.
5. The Tribunal was urged to find that the Aggrieved Worker should be reinstated or compensated without loss of pay.



### **THE COMPANY'S CASE**

16. The Company's only witness was Mr. Radcliffe Haynes, who at the material time was the General Manager of the Company. His duty was to oversee the entire operations of the business, including matters relating to employment and human resource. He was primarily responsible for recruiting new employees. He knew the Aggrieved Worker as he applied for a job at Triple Century Sports Bar and commenced working there in May 2014 as a bartender. The Aggrieved Worker's supervisor was Mr. Benjamin Barrett, the Bar Manager. Mr. Haynes said the Aggrieved Worker stopped working at Triple Century Sports Bar in April 2016. He said that the Aggrieved Worker was sent on two weeks' vacation leave at the end of March 2016. He did not resume work after the two weeks' vacation leave. He said he did not give the Aggrieved Worker a letter of termination prior to him going on vacation leave. He said that the supervisors, team leaders, bar manager and operations manager were not authorized to terminate the employment of any staff member. At the time when the Aggrieved Worker proceeded on vacation leave, the Company had no outstanding disciplinary proceedings against him. He said that the Aggrieved Worker was a very good bartender and a good worker. The Company had no reason to terminate the employment of the Aggrieved Worker. It did not want to terminate his employment, as the company had invested in him.
17. He said that on the last night the Aggrieved Worker worked at Triple Century Sports Bar, he called him to his office and spoke to him one to one. He agreed that when the Aggrieved Worker arrived in his office, there were two other persons in the office, but they left the office and it was just him and the Aggrieved Worker.

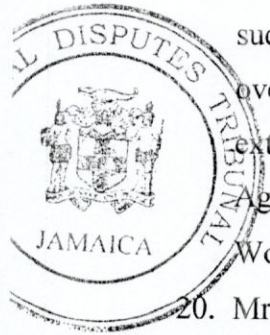
18. He was unaware of the Aggrieved Worker was freelancing and he denied that Ms. King was the Bar Manager. He said Miss Camille Simpson was the person who worked in the office and she was the Accountant and Office Manager, and everything went through her. He asked Miss Simpson to call the Aggrieved Worker when he did not return. He said the email for the company was [info@triplecenturysports.com](mailto:info@triplecenturysports.com). At the material time only three persons had access to the email account, the Operations Manager, the Office Manager and him.

Miss King had no access to the email account. He said that on one occasion the Aggrieved Worker showed up at Triple Century Sports Bar in a uniform.

19. He said the Aggrieved Worker received gratuity while working there and that no gratuity was owed to him. The Aggrieved Worker was paid \$250.00 per hour. He tried to give him 40 hours per week. He was scheduled to work 80 hours for two weeks. His two-week salary was \$20,000.00. The Aggrieved Worker hardly ever got that salary for a number of reasons, such as salary advance and lunch bills. The Aggrieved Worker was the first person given overtime and his salary would be up from 80 hours to 100 hours, as he was always given extra hours. He was the first person the Company called when someone called out sick. The Aggrieved Worker was paid service charge monthly. He said he did not fire the Aggrieved Worker as he had no reason to do so, as the Company had even sent him on training.

20. Mr. Haynes denied handing the Aggrieved Worker a letter that stated that he was not working there anymore. He also denied telling the Aggrieved Worker, that he was not to worry as after three months, employees are sent on two weeks leave. It was not the policy of the Company to send employees on vacation for two weeks after three months. The Aggrieved Worker worked continuously for over a year and got days off. The schedule was for five days, as the standard shift is five days per person. The Aggrieved Worker would call in ask to work extra hours.

21. During cross examination, Mr Haynes stated that the Aggrieved Worker worked at the Company two years and that while he worked there both Nadine Bull and Benjamin Barrett worked there. He agreed that Mr. Barrett had been fired. He said that the Aggrieved Worker went on vacation leave and there was a record of the leave, but that he did not have the Aggrieved Worker's record with him at the hearing. He said he was aware of the Holidays with Pay Act and the company's duty to keep records of vacation leave. He could not recall a request by Robert Moore, Attorney-at-Law to him to furnish documents.



*MS*

22. He agreed that [info@triplecenturysports.com](mailto:info@triplecenturysports.com) was the email for Triple Century Sports Bar and that he received emails from Robert Moore, Attorney-at-Law. He said that the Aggrieved Worker was a good worker and that a particular of set of patrons loved him. He said that he knew Denise McPherson, she was the Company's Operations Manager at the time. He said he was not able to verify the contents of Exhibit 2, as the first time he was seeing it was at the Tribunal. He denied submitting Exhibit 2 to the Ministry of Labour & Social Security. He stated that he personally saw the Aggrieved Worker wearing the uniform of another company. He said that he received information from a number of employees that the Aggrieved Worker was working elsewhere and he insisted that the Aggrieved Worker left his job.
23. During questions from the panel, he stated that he liked the Aggrieved Worker and that the Company tried contacting him. The Aggrieved Worker was a great bartender and would have been the Bar Manager by now. He stated that he did not give the Aggrieved Worker a letter when he was sent on vacation leave neither did Denise McPherson hand him one. He stated that he disagreed with the contents of Exhibit 2.

### THE COMPANY CONTENTIONS

1. The Aggrieved Worker's employment was not terminated by the company. In order to succeed with a claim of unfair dismissal the Aggrieved Worker must show that he was dismissed.

The evidence of Miss Nadine Bull does not help the Tribunal to determine the issue of whether the Aggrieved Worker was dismissed.

The Aggrieved Worker's evidence is that there was a fire that destroyed his termination letter. A fire report would have assisted the Tribunal and helped it to assess the credibility of the Aggrieved Worker. When a fire destroys critical evidence, it is usually to try and obtain a fire report.

4. The only evidence that the Aggrieved Worker is relying on to support his claim that he was terminated is Exhibit 2, a photocopy letter purportedly signed by Miss Denise McPherson. The Tribunal should give little or no weight to it. It is a photocopy and the Company's witness did not adopt the letter. Even the Aggrieved Worker's evidence is



*MS*

that the document looks familiar. There is no unequivocal, categorical recognition or confirmation by the Aggrieved Worker that this was the letter he received from Mr. Radcliffe Haynes.

5. Exhibit 2 is in direct conflict with Exhibit 3 (the letter dated October 31, 2016). Exhibit 3 says that the Aggrieved Worker received a letter signed by Mr. Radcliffe Haynes purporting that the Aggrieved Worker was going on two weeks leave. Exhibit 2 says something different, i.e. *"We are sorry to inform you that your contract has expired. This will be your last working day."* Exhibit 2 is devoid of reference to vacation leave, but this is the letter that the Aggrieved Worker said he received sending him on vacation leave.
6. The Aggrieved Worker's case is all over the place in relation to termination and there is no cogent, credible and reliable evidence of termination.
7. Mr. Radcliffe Haynes's testimony should be accepted. He was clear, cogent and consistent. There was no discrepancy in his evidence.
8. The Tribunal should find that the Aggrieved Worker was not terminated and therefore he is not entitled to any relief.



#### **THE TRIBUNAL'S FINDINGS & RESPONSE**

1. The Aggrieved Worker was sent on vacation leave on the last Monday in March 2016 for two weeks. This is the evidence of both the Aggrieved Worker and the Company's witness.
2. The Aggrieved Worker did not resume work at the end of the leave.
3. The Aggrieved Worker has presented conflicting versions as to what transpired between when he was sent on vacation leave and when he was to resume work. The first version was set out in a letter dated October 31, 2016 (Exhibit 3) from the Aggrieved Worker's Attorney-at-Law, in which it was stated that the Aggrieved Worker's contract was terminated in or about April 1, 2016 and that he was given a letter signed by Radcliffe Haynes on behalf the company. The letter signed by Radcliffe Haynes also purported that the Aggrieved Worker was going on a two weeks' vacation leave. The second version was in the form of photocopy letter dated March 28, 2016 (Exhibit 2) purportedly under

- the signature of Denise McPherson which stated that his contract had expired and that he would get his full and final settlement in the next payroll cycle being April 7, 2016.
4. Exhibit 2 is not accepted as being a reliable document as it a photocopy document and the alleged maker of it was not present to speak to its authenticity. It conflicts with the letter of October 31, 2016 (Exhibit 3) and the Aggrieved Worker's oral evidence that he was sent on vacation leave.
  5. The Tribunal finds that the Aggrieved Worker was not a credible witness as he has presented conflicting documentary evidence. His evidence as to how he ceased working with the Company is not accepted as truthful.
  6. The evidence of Mr. Radcliffe Haynes is that he oversaw matters related to Employment and Human Resources at the Company and that supervisors, team leaders, the bar manager, and the operations manager were not authorized to terminate staff is accepted. This is corroborated by the letter of termination handed to Nadine Bull which was signed by him and also by the Aggrieved Worker's evidence that every document from the Company had Mr. Haynes' signature.
  7. The Tribunal finds that the Aggrieved Worker freelanced during his vacation leave and that he commenced employment with another company, namely Constant Spring Golf Club in June 2016.
  8. The Tribunal has accepted the evidence of Mr. Radcliffe Haynes, that the Aggrieved Worker did not resume work after his vacation leave. This non-resumption of work by the Aggrieved Worker resulted in the termination of his employment with the Company by way of abandonment.



**AWARD**

In accordance with Section 12 of the Labour Relations and Industrial Disputes Act (Act) the Tribunal awards that

- (a) MR. ANDREW BAILEY was not dismissed from his job by his employer;
- (b) MR. ANDREW BAILEY abandoned his job thereby repudiating his contract of employment.

DATED THIS 8<sup>th</sup> DAY OF JANUARY 2020



*Marsha Smith*

Miss Marsha Smith  
Chairman

*Leslie Hall*

Mr. Leslie Hall, J.P.  
Member

*Clinton Lewis*

Mr. Clinton Lewis  
Member

Witness

*Gary Lediard*

.....  
Gary Lediard  
Secretary to the Division