

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 7/2013

SETTLEMENT OF DISPUTE

BETWEEN

CAYMANAS TRACK LIMITED

AND

MR. CONRAD BROWN

AND THE

AWARD

I.D.T. DIVISION

MR. NORMAN WRIGHT Q.C.	-	CHAIRMAN
MR. RION HALL	-	MEMBER
MR. D. TREVOR MCNISH	-	MEMBER

OCTOBER 21, 2015

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**CAYMANAS TRACK LIMITED
(THE COMPANY)**

AND

**MR. CONRAD BROWN
(THE AGGRIEVED)**

REFERENCE:

By letter dated March 7, 2013, the Honourable Minister of Labour and Social Security in accordance with Section 11A(1)(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 Caymanas Track Limited on the one hand, and Mr. Conrad Brown 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:

- Mr. Norman Wright, Q. C. - Chairman
- Mr. Rion Hall - Member, Section 8(2) (c) (ii)
- Mr. D. Trevor McNish - Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- Mr. Lauren Marsh - Caymanas Track Limited's Representative
- Ms. Cassandra Anderson - Attorney-at-law
- Miss Tanya Wilson - Human Resource and Industrial Relations Manager

The **Aggrieved** was represented by:

- Miss Keron Hicks - Attorney-at-Law

In attendance was **Mr. Conrad Brown** - Aggrieved worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during four (4) sittings held between September 30, 2015 and October 7, 2015.

BACKGROUND:

Caymanas Track Limited is a company incorporated and domiciled in Jamaica, is limited by shares and is wholly owned by the Government of Jamaica through the Accountant General.

The principal activities of the Company comprise the promotion of horse racing at Caymanas Park, Gregory Park, St. Catherine, under licence, promotion of simulcast horse racing and the conducting of pari-mutuel pools thereon, both at track and off-track.

Mr. Conrad Brown was employed to Caymanas Track Limited (CTL) on February 16, 2010. By letter dated October 22, 2011, he was informed that his services would be terminated, effective November 5, 2011. The letter did not state any reason for termination of the contract of employment. Mr. Brown did not accept the termination of his employment and requested the intervention of the Ministry of Finance, which through its Public Accounts Inspectorate, carried out an investigation into the matter. The Ministry thereafter in a letter of response dated October 8, 2012 advised Mr. Brown of its findings that **“CTL erred in its process of terminating your services”** and would advised CTL accordingly.

CTL did not comply with the Ministry of Finance’s directives and Mr. Brown therefore referred the matter to the Ministry of Labour and Social Security and after failure to achieve conciliation, by letter dated 7th March 2013, the matter was sent to the Industrial Disputes Tribunal for settlement. CTL was not in agreement and by letter of May 13, 2013, from their lawyers, the IDT was advised that they would be applying to the Supreme Court for judicial review to quash the reference to the IDT and an Order of Prohibition preventing the IDT from hearing the dispute. The application was made and granted on May 21, 2013, but the final ruling, in favour of the IDT hearing the matter, only came on June 16, 2015. Consequently, the matter only commenced hearing at the IDT on September 30, 2015, approximately four years after the dismissal of Mr. Brown.

COMPANY’S CASE:

CTL’s representatives informed the Tribunal that it was not in a position to adduce any evidence in support of the justification of Mr. Conrad Brown’s termination of employment.

CTL’s position is that it is willing to compensate Mr. Conrad Brown for the unjustifiable dismissal, but the financial state of the Company at this time is a restraining factor.

The CTL Financial Controller gave evidence that the entity’s financial state is as follow:

- CTL is a near bankrupt entity.

- CTL as a self-funding entity receives no financial subsidy from the Ministry of Finance and is financed mainly from revenues provided from local and simulcast racing (overseas).

- that the position of Chief Engineer which was held by Mr. Brown has been filled.

A substantial award in monetary terms by the Tribunal would have a devastating effect on the entity, based on its current position, where it is lacking in working-capital, having liabilities in the region of \$1B and facing a threat of not meeting its forecast to break-even in the current financial year. Furthermore Mr. Conrad Brown had a duty to mitigate his losses and given his qualification and expertise, he should have had little or no difficulty in gaining employment.

It was further submitted, that in order for the Tribunal not to give effect to CTL's submission that Mr. Brown had failed to mitigate his losses, consistent with **Gardiner-Hill v Roland Berger Technics Ltd (1982) IRLR 498**, the employee must first satisfy the Tribunal that he has made serious attempts to seek alternative employment.

CASE FOR THE AGGRIEVED:

Mr. Conrad Brown, the aggrieved worker, called no witnesses but relied on the following submissions by his attorney-at-law:

- (1) that the termination of Conrad Brown's employment is unjustified for the following reasons:
 - (i) "CTL violated the guidelines laid down by the Labour Relations Code in effecting the dismissal in the way it did.
 - (ii) the dismissal was unjustified and was a flagrant violation of the rights of the aggrieved party to work and support his family and himself, and
 - (iii) the Tribunal should compensate the aggrieved party for all of the above."

- (2) that the termination of Mr. Conrad Brown's services without any reason being stated, has caused him untold hardship, both economic and reputational. In addition, he could not effectively respond to prospective employers who enquired about the reasons for his dismissal from his last employment, thereby prejudicing his chances of obtaining new

employment

- (3) that owing to the fact that CTL had knowledge of Conrad Brown's compensatory claims, prior to the matter being referred to the Industrial Disputes Tribunal for settlement, it was incumbent on them to have made provisions in their budget in order to settle the claim fully; having regard to the fact that it was their action which had led to the delays of approximately four years.
- (4) that an Award of Reinstatement or Compensation in the amount of \$17.5M, would be a reasonable remedy in satisfaction of his claim, in order to cover four years salary, interest/penalties on outstanding loans, credit cards and medical bills incurred.

TRIBUNAL'S FINDING:

It is admitted by both parties in this matter that the real issue that prevented a resolution of the claim was with respect to the amount to be paid to the aggrieved party, Mr. Brown. In doing so, the representative for CTL indicated that they were not challenging the allegation that the dismissal of Mr. Brown was unjustified and admitted that there were certain procedural irregularities which contributed to this outcome.

From the very outset, CTL indicated their willingness to compensate Mr. Brown but that their ability to do so was limited by the state of the entities finances. On the other hand, Miss Hicks on behalf of Mr. Brown, submitted that they were claiming a sum of over \$20M, having regard not just to the wrongful dismissal of Mr. Brown, but also because the letter of dismissal was written in such language, that it was not only embarrassing for Mr. Brown to disclose same to would-be -employers, but also that it reflected negatively on him as a professional person.

In addition, Miss Hicks submitted that apart from being unable to get a job as a result of the manner of his dismissal, Mr. Brown found himself heavily indebted with his credit cards and loans that he had borrowed during his employment and was unable to service due to his dismissal. Also for consideration, were his medical bills which were substantial and would have been highly offset by the Company's medical plan.

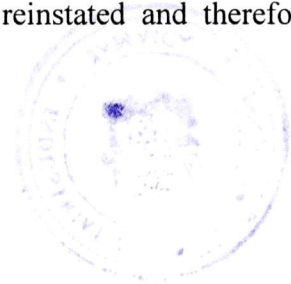
Mr. Marsh for CTL made submissions as to the situations being faced by the Board of CTL, as well as the heavily indebted operations of CTL and called as a witness as to their financial position, a Mr. NWeke, the Financial Controller of the Company, to support CTL's position.

The matter was adjourned on at least two (2) occasions, to allow the parties to have discussions, in an effort to see if their respective positions could bring them closer to an agreed sum by way of a compromise, but this was not achieved.

Despite submissions on behalf of Mr. Brown as to the difficulties he was experiencing as a result of being unemployed, he gave no viva voce evidence in support of this and this the Tribunal has taken into its consideration.

In light of the above, the Tribunal gave full consideration to the evidence and submissions on both sides and came to the conclusion that a just and reasonable sum by way of a settlement of this dispute would be \$10M to Mr. Brown, in the event that CTL is not willing or able to re-instate him.

The Tribunal accordingly notes Mr. Brown's expressed desire to be reinstated and therefore makes the following award.



AWARD:

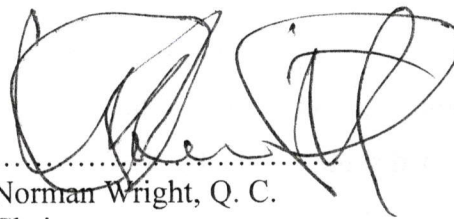
In accordance with Section 12(5) (c) (iii) of the Labour Relations and Industrial Disputes Act (LRIDA) the Tribunal awards that:

(a) the Company reinstate Mr. Conrad Brown on or before November 1, 2015, with payment of full emoluments

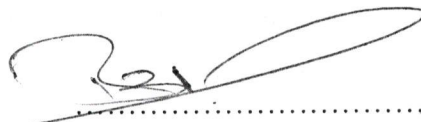
Or

(b) failure to reinstate Mr. Brown as stipulated in (a) above the Company shall pay to him compensation in the amount of \$10M for his unjustifiable dismissal as full and final settlement of this dispute.

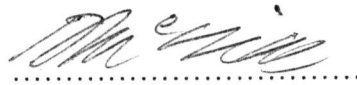
DATED THIS 21 DAY OF OCTOBER, 2015.



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Norman Wright, Q. C.
Chairman

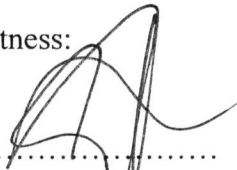


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Rion B. Hall.
Member



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D. Trevor McNish
Member

Witness:



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Gary Lediard
Secretary to the Division