

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 21/2014

SETTLEMENT OF DISPUTE

BETWEEN

CHARTERMAGNATES LIMITED

AND

NORMA ROBERTS

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES, CD JP - CHAIRMAN

MR. LESLIE HALL - MEMBER

MR. CLINTON LEWIS - MEMBER

NOVEMBER 10th, 2015

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**CHARTERMAGNATES LIMITED
(THE COMPANY)**

AND

**MISS NORMA ROBERTS
(THE AGGRIEVED)**

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 Chartermagnates Limited on the one hand and Ms. Norma Roberts on the other hand over her redundancy payment."

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. Clinton Lewis - Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- Mr. Gavin Goffe - Attorney-at-Law
- Mr. Jermaine Case - Attorney-at-Law

The **Aggrieved** was represented by:

- Senator Lambert Brown - President (UAWU) - Consultant
- Mr. Garfield Harvey - Third Vice President (UAWU) - Consultant

In attendance was Miss Norma Roberts - Aggrieved worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during ten (10) sittings held between July 8, 2014 and July 23, 2015.

BACKGROUND TO THE DISPUTE:

Miss Norma Roberts was employed to the auditing firm Chartermagnates Limited (CmL) effective May 14, 1987. On November 12, 1997 she was promoted as a Senior Secretary in the firm. CmL provided services to the auditing firm Deloitte, Touche, Tohmatsu Limited (Deloitte).

In July 2013 Deloitte, was taken over by auditing firm Ernst and Young Limited (EY). On July 12, 2013 a CmL staff meeting was held at which time they were informed of changes that would

take place and which would affect some jobs. By letter dated August 30, 2013 Miss Roberts received an offer of employment for the position of Senior with Ernst and Young Services Limited, to take effect on September 1, 2013.

By letter dated September 18, 2013, Miss Roberts wrote to Mr. Audley Gordon, Senior Partner of CmL requesting that the firm pay her redundancy for her over twenty-six (26) years of unbroken service with CmL. She received no response and subsequently contacted the University and Allied Workers Union (UAWU), operating as Consultants, to represent her in this matter. Conciliatory meetings were held at the Ministry of Labour and Social Security in an effort to settle the dispute.

These meetings failed to achieve a settlement and consequently the Honourable Minister of Labour and Social Security referred the dispute to the Industrial Disputes Tribunal (IDT) for settlement.

THE HEARING:

The Tribunal had proposed commencement of the hearing of this matter on July 8, 2014. Mr Gavin Goffe, Attorney-at-Law in the law firm Myers, Fletcher and Gordon, representing CmL, by letter of the same date advised the Tribunal that he was unable to attend due to a prior engagement. In his letter he stated in part as follows:

“We are of the view that the referral of this matter to the Industrial Disputes Tribunal is ultra vires of the Minister as it is not an ‘industrial dispute’ as defined in the Labour Relations and Industrial Disputes Act.”

He ended his letter by stating “Chartermagnates does not therefore agree with the Terms of Reference as framed and requests that the matter be remitted to the Ministry of Labour for further consideration”.

Mr Goffe subsequently wrote to the Honourable Minister of Labour and Social Security on August 13, 2014, enclosing a copy of his letter of July 8, 2013 addressed to the Tribunal.

He inquired of the Minister whether this matter was referred to the IDT in error as there was a need to understand whether the IDT had jurisdiction and stated that CmL was reluctant to attend the hearing before understanding the basis of the referral.

The Tribunal communicated the objection raised by the attorney to the Ministry of Labour and Social Security and by letter dated January 2, 2015 the Ministry advised as follows:

“.... it is the position of this Ministry that the matter was correctly referred to the Tribunal under whose jurisdiction the dispute now resides.”

The Tribunal convened a sitting on February 16, 2015. At the commencement the Attorney stated that his client CmL was maintaining its challenge to the jurisdiction on the basis that it was not an industrial dispute and therefore the Minister of Labour and Social Security had no authority to refer the matter to the IDT.

The Tribunal informed the Ministry of Labour and Social Security of this further objection and the Ministry replied reiterating that the dispute was properly referred and would therefore not be withdrawn.

Members of the Tribunal were clear in their minds that the Terms of Reference having been referred to the Ministry of Labour and Social Security on two occasions, and the Tribunal having been informed that the matter was properly referred for settlement agreed that they had the authority to hear this matter.

The Tribunal then convened a sitting on March 26, 2015. After the sitting was called to order the parties were advised that the Ministry of Labour and Social Security, by letter dated March 25, 2015 advised that the matter was properly referred and that as a result of this advice the Tribunal would commence hearing the matter on May 7, 2015.

At the sitting held on May 7, Mr. Jermaine Case, Attorney-at-the law from the firm Myers, Fletcher and Gordon who was in attendance informed the Tribunal that he was present only as an observer. Mr Goffe, the lead attorney was not in attendance. The Tribunal took the decision to adjourn the sitting and to reconvene on May 18, 2015. This was to allow time for the Tribunal to advise the parties to the dispute that failing the receipt of a Court Order not to proceed, the Tribunal would commence hearing the matter on that date. The Tribunal also advised that should the Company choose not to participate in the proceedings; the matter would be heard *ex parte* in accordance with the provisions of Section 16A of the Labour Relations and Industrial Disputes Act, 1976.

The Tribunal commenced hearing the matter on May 18, 2015. Mr. Case, Attorney-at-Law was in attendance and advised the Tribunal that CmL would participate in the proceedings.

THE AGGRIEVED WORKER'S CASE:

The University and Allied Workers Union (UAWU), operating as Consultants, represented Miss Roberts. The case presented, was that on July 12, 2013, together with other members of staff in attendance in a staff meeting, Miss Roberts was told that some changes would be taking place in the entire structure of Deloitte which would affect everyone. At that time, the information given was very vague.

Miss Roberts, however, was made to understand that:

- a) Deloitte Jamaica would be operating under a new name effective September 1, 2013. The new name was not disclosed.
- b) Some persons would remain with the new company while others would be made redundant.
- c) Some persons would be offered employment by another firm, the name of which was not disclosed.
- d) The effective date of separation would be August 31, 2013.

The members of staff were not issued written communication which would have clarified the information provided in the meeting.

The employees eventually discovered that the international management consulting and audit firm Ernst & Young Services Limited (hereinafter referred to as EY) was the entity which would be taking over the business from Deloitte and that this would impact the employees of Chatermagnates.

Miss Roberts was told by one of the partners that she should expect to be contacted by EY with a job offer. She was led to believe that any such offer would include all of her terms and conditions of employment, including her years of service.

By letter dated August 30, 2013, over the signature of Miss Allison Peart, EY offered Miss Roberts employment with terms and conditions which were significantly different from those under which she had been employed with CmL.

Miss Roberts in giving evidence stated that it was implied that EY would be taking over her years of service and that she was under the impression that her services would be continuous. When it became evident to her that this was not so, she therefore concluded that she had been made redundant. She then enquired about her redundancy payment and was told that there was no money.

Mr. Goffe, Lead Attorney, in cross examination implied that the Company's position was that Miss Roberts was transferred.

During the presentation of the case for the aggrieved the lead Attorney for CmL objected to certain paragraphs in the brief presented and asked that these be struck out. The Tribunal agreed. He then requested that the members of the panel recue themselves because they were now privy to certain information. The Tribunal gave consideration to the request but advised the attorney that it was their considered view that by virtue of being privy to information which the Tribunal had not requested, it was not sufficient grounds for the panel to recue itself, bearing in mind that it was objective judgment by which they were guided.

THE COMPANY'S CASE:

The Attorney for CmL in the brief submitted made reference to the fact that from the outset the firm had taken issue with the referral of this matter to the IDT on the basis that the nature of the dispute concerned breaches of the Employment (Termination and Redundancy Payments) Act (ETRPA). He submitted that the IDT had no jurisdiction to determine whether there was a breach of the ETRPA and that Miss Roberts was not entitled to a redundancy payment as her services were re-engaged with Ernst and Young, and consequently there was no termination which would give rise to a redundancy situation in this case.

No witnesses were called by the Company.

Having closed the Company's case, the Tribunal invited Mr. Goffe to present the closing arguments on behalf of his client. Mr. Goffe argued that in this case where the Company called no witness it should be the aggrieved to close first and cited a recent case that he was involved in at the Tribunal. Members deliberated and maintained that it was the Company that should close first, in keeping with the Tribunal's normal Procedure. Mr. Goffe then complied

TRIBUNAL'S RESPONSE:

In determining Miss Roberts' right to the payment of redundancy, the Tribunal asked itself the following questions:

- i. Did Miss Roberts' employment with CmL come to an end?
- ii. Was Miss Roberts' employment with Ernst and Young a continuation of her employment with CmL?

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

- i. Miss Roberts was employed to CmL, a firm that was contracted by the Jamaican operations of Deloitte and Touché and Deloitte, Touché, Tohmatsu. These entities were eventually taken over by the audit firm Ernst and Young.
- ii. Although Miss Roberts performed duties at Deloitte, her employer was CmL. In her evidence she made it clear that she was employed by CmL, but was deployed to Deloitte.
- iii. Miss Roberts was offered employment with Ernst and Young with effect from September 1, 2013 and she accepted this offer, which from all indications did not appear to be a continuation of her employment with CmL.
- iv. The terms of Miss Robert's employment with EY were different from the terms of her employment with CmL.
- v. Having accepted the offer of employment with EY she wrote to Mr Audley Gordon, Partner of CmL on September 18, 2013 enquiring of her redundancy payment in respect of her years of service with CmL

The letter which was produced in evidence read as follows:

“Re: Redundancy Pay

I Norma I. Roberts have been an employee of Chartermagnates Limited since June 3, 1987. The recent events which resulted in my being offered employment with another firm does not include carrying over my 26 years of continued service with Chartermagnates. This is a clear case of redundancy.”

“I am therefore requesting that Chartermagnates Limited pay me my redundancy pay, as legally obligated to do under the laws of Jamaica. I anticipate a response from you within two weeks of the date of this letter. Yours sincerely, Norma Roberts.”

She received no response. With regard to a discussion held with Mr Gordon subsequent to offer of employment with EY, she testified as follows:

“Well, I told him I was sorry about what happened and wished him all the best. And I said what about my redundancy because I am supposed to be getting redundancy because of what I see here, and he said he didn’t have any money; he had no money; that’s what he said.”

This statement was not challenged.

Members noted that Miss Roberts in her evidence had stated in regard to the meeting held on July 12, 2014 –

“- - we didn’t get any information at all - - all they informed us about was that the structure of the Company was going to be changing and that we would all be affected. Some of us would be going to a new Company that they would be forming, and some of us would be made redundant, and others of us would be going into another firm but they did not disclose the name of the firm.”

The Tribunal also examined the letter offering Miss Roberts employment with EY and found no clause which would have indicated that this was not a new employment, but was instead a continuation of her employment with CmL. Indeed certain statements in the letter of August 30, 2013 suggested that it was a new employment. For example:

- Paragraph 1 of the covering letter reads “We are pleased to offer you the position of Senior with Ernst and Young Services Limited effective September 1, 2013”
- The first term in the contract of employment states “Your employment will commence on 1 September 2013”. No mention was made of a transfer or continuity of previous service.
- In relation to the pension scheme it was stated:

“You will be required to join the firm’s pension scheme on 1 September 2013. This scheme is contributory.”

No mention was made of continuing employment, and in her evidence Miss Roberts indicated that she was refunded contributions she had made during her service with CmL but had not received the firm’s contributions. She also indicated that she was not allowed to transfer her pension contributions from the CmL’s pension scheme to the EY’s plan.

Members then summarised as follows:

- It was clearly Miss Roberts’ understanding that since she was not transferred to EY, then she must have been dismissed from CmL on August 31, 2013 on the grounds of redundancy. No evidence was brought by CmL to show that this was not so.
- In accepting the post with EY she had a reasonable and legitimate expectation that she would be compensated for her years of service to CmL and this she had expressed in her letter of September 18, 2013.
- The Tribunal was not presented with any evidence by CmL during the hearing that Miss Robert’s twenty six (26) years of service to the firm would be treated as continuous with her employment to EY, although the Company lawyer alluded to her cessation of employment to Cml as a transfer.
- The Tribunal noted that Miss Roberts in her evidence stated that CmL had refunded her pension contributions. The Tribunal was not however privy to the terms and conditions of CmL’s pension scheme and in particular, the contributory requirements of the Scheme.

The Tribunal after careful deliberation concluded that the answers to the questions were:

- i. Miss Roberts’ employment with CmL came to an end on August 31, 2013, and
- ii. Her employment with EY which commenced on September 1, 2013 was not a continuation of her employment to CmL.

These answers led the Tribunal to a third question. In light of the manner in which Miss Roberts' employment transitioned from CmL to EY, was she eligible for redundancy payment in keeping with the relevant provisions of the Employment (Termination and Redundancy Payment) Act?

In answering this question, the Tribunal noted that Miss Roberts was not issued a letter of termination. The Tribunal examined the facts as presented in this matter, in particular the following:

- i. Miss Roberts who had twenty-six (26) years service with CmL was called to a meeting on July 12, 2013 and advised that changes would be taking place at Deloitte including redundancy.
- ii. She was advised to expect a call from EY.
- iii. On or about August 30, 2013 she received an offer of employment with EY to commence on September 1, 2013 which she accepted.
- iv. She wrote to Mr. Audley Gordon on September 18, 2013 with regard to her redundancy payment, but she received no written response. She received a verbal response that there was no money.
- v. Miss Roberts had a legitimate expectation that her twenty-six (26) years of service with CmL would have been preserved in her new employment. There was no evidence that it was done.
- vi. On examination of the terms and conditions of her employment to EY, there was no provision for the preservation of these years of service

FINDINGS:

The Tribunal finds that Miss Roberts was surreptitiously terminated from her job with CmL with effect from August 31, 2013 without the appropriate documentation.

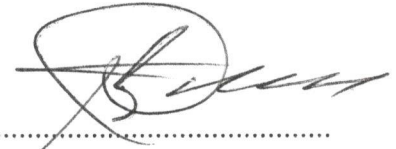
The Tribunal therefore concluded that Miss Roberts' service of twenty six (26) years with CmL should have been preserved. Payment in the form of a redundancy should have been made to

her. In the considered opinion of the Tribunal, CmL's failure to recognize this service and to compensate her accordingly was unreasonable.

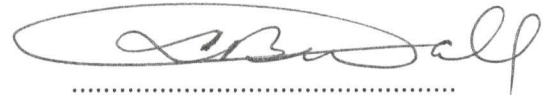
AWARD:

The Tribunal Awards that Miss Roberts be compensated by the payment of sixty eight (68) weeks basic salary calculated on the salary she was receiving as at August 31, 2013.

DATED THIS 10th DAY OF NOVEMBER, 2015



.....
Charles Jones, CD JP
Chairman



.....
Leslie Hall
Member



.....
Clinton Lewis
Member

Witness: 

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

