

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 35/2014

SETTLEMENT OF DISPUTE

BETWEEN

DANGEL AUTO SPARES & ACCESSORIES LIMITED

AND

TANIQUE GRANT

AWARD

I.D.T. DIVISION

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

February 3, 2016

IDT 35/2014

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

DANGEL AUTO SPARES & ACCESSORIES LIMITED

(THE COMPANY)

AND

TANIQUE GRANT

(THE AGRIEVED)

REFERENCE:

By letter dated September 25, 2014 the Honourable Minister of Labour and Social Security pursuant to 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 Dangel Auto Spares & Accessories Limited on the one hand and Tanique Grant 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. 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 PARTIES:

The **Company** was represented by:

- Mr. Anthony Pearson - Attorney-at-Law

In attendance was:

- Mrs. Angela Richards - Director, Personnel & Administration

Mrs. Tanique Grant was represented by

- Mr. Howard Duncan - Industrial Relations Consultant

In attendance was:

- Miss Tanique Grant - Aggrieved Worker

SUBMISSIONS AND SITTINGS:

Brief were submitted on behalf of the aggrieved worker and oral submissions by both parties made during five (5) sittings, held between May 11, 2015 to November 30, 2015.

BACKGROUND TO THE DISPUTE:

Dangel Auto Spares & Accessories Limited is a registered auto parts and accessories company registered in Jamaica, with its main offices situated at 20 Balmoral Avenue, Kingston 10 and a outlet branch in May Pen, Clarendon.

Mrs. Tanique Grant stated that she was employed to Dangel Auto Spares & Accessories Limited from April 14, 2010 up to May 3, 2012, when she went on maternity leave for a period of three months and to return on July 27, 2012. She however, requested a further total of twelve (12) days and returned to work on August 9, 2012. On August 10, 2012, on coming to work she was handed a letter of termination, to which she objected and subsequently referred the matter to the Ministry of Labour. The Ministry failed to achieve resolution and the dispute was consequently referred to the *Industrial Disputes Tribunal* to be determined and settled.

THE COMPANY'S CASE:

The Company's case was led by its Attorney, through one witness, Mrs. Angela Richards a Director with responsibility for Personnel & Administration on a daily basis.

The Company contends that Mrs. Tanique Grant was employed on February 14, 2010, as a temporary worker at the May Pen branch and scheduled to be trained to take over from the regular cashier, who was to go off on maternity leave. The regular cashier returned in October 2010, and Mrs. Grant was then advised that there was no permanent post for her. She asked if she could be transferred to the Kingston Office but was also advised that there was no vacancy at that location as well. She was however, kept on at the May Pen branch, on a compassionate basis.

In the next year (2011) the child of the regular cashier became ill and Mrs. Grant was again asked to relieve for her. On her return to work she had to make regular doctor's visits and Mrs. Grant would always be asked to fill in. In November 2011, Mrs. Richards visited the May Pen branch and advised Mrs. Grant that the regular cashier was now fully back at work and since business was slow there would be no work for her. She however, begged to stay on as she was looking for a job.

On the 31st, December 2011, Mrs. Grant got married and sometime in January 2012, the regular cashier advised Mrs. Richards that Mrs. Grant was in hospital. On visiting her, Mrs. Richards was advised that Mrs. Grant was pregnant and was having health

problems. On the instructions of her husband (Mr. Richards), Mrs. Grant was held as staff. Mrs. Richards subsequently received a letter requesting maternity leave which was granted and along with outstanding vacation leave she went off from May 3, 2012 and returned August 7, 2012. (The Attorney advised it was on August 8, 2012.) Mrs. Richards received a call from the May Pen branch that Mrs. Grant had returned to work without invitation or advice and had taken over the cash from the sitting cashier without instruction from management. Mrs. Richards then visited the May Pen branch on August 9, 2012 and spoke with Mrs. Grant about her behaviour of taking over the cash without authorization and had breached the Company's policy. She then advised her that there was no position for her and as such she had to be terminated. She gave her a letter outlining the separation and a cheque for J\$18,335.80. They separated amicably because there was full understanding of what was happening. Consequently Mrs. Grant was not unjustifiably dismissed.

Under cross examination, Mrs. Richards, explained that the Company had lost confidence in Mrs. Grant, based on the manner in which she came back and took control of the cash. She may have kept her employed until the end of the month but the breach was considered too strong to be avoided.

Regarding the date of the letter of dismissal, Mrs. Richards advised that she did not type it but was the one who signed it and handed it to Mrs. Grant on August 9, 2012. The date of September 9, 2012, was a typographical error but was only discovered afterwards. She further advised that she did not receive an appeal from Mrs. Grant, consequently when she received a letter in that regard from Mr. Howard Duncan, (Industrial Relations Consultant) she was shocked, because she and Mrs. Grant had parted amicably and with good understanding. If she had not breached the Company's policy, in the manner in which she had taken over the cash on her return to work, she would have been maintained on temporary basis to relieve the cashier.

THE AGRIEVED WORKER'S CASE:

The representative of Mrs. Grant contends that the dispute before the Tribunal is a simple matter and would provide the basis leading to a conclusion that she was unfairly treated. He did so through the brief submitted and presentations supported by the evidence of the aggrieved, Mrs. Tanique Grant.

Mrs. Grant was employed to Dangel Auto Spares & Accessories Limited on April 14, 2010 and worked very hard in ensuring that the company received quality service. On May 3, 2012 she went on maternity leave, which should be for a period of three (3) months. The approval was for her to return on July 27, 2012, but she sought a further total of twelve (12) days as she was having some medical issues and needed more time to recover from her pregnancy (allowed in that extra one (1) month as provided by the Maternity Leave Act). She went on Maternity leave and had a right to return to work in keeping with the Holiday with pay Act and the Maternity Leave with pay legislation but was dismissed without normal rights.

She returned to work on August 9, 2012, and worked as normal. When she came to work on August 10, 2012, as she entered the door, she was presented with a letter of termination, dated September 9, 2012. She was not charged for any offence, was not provided with the right of representation neither was she allowed to face her accusers nor was she subjected to a fair and proper disciplinary hearing consistent to the Labour Relations Code. The right to an appeal was also not afforded.

Mrs. Grant contends that prior to her dismissal she had no dialogue with Mrs. Richards or anyone from Dangel. She was not accused of any charges nor was she ever called into any meeting by anyone. On receiving the letter of dismissal she went to the Ministry of Labour & Social Security (MLSS), which advised her as to how to proceed with her claim for unfair dismissal. She then contacted Mr. Howard Duncan, Industrial Relations Consultant who wrote to Dangel requesting an appeal on her behalf. The company's response was that they had referred the matter to their Attorney and no appeal hearing was granted.

At the MLSS efforts were made to resolve the issue, however failure by the company to regularly attend and not being able to reach common ground, led to the Ministry referring it to the Tribunal.

The representative submitted that the LRIDA was amended in 1976 to define the employer and the employee. The employee is one, among other things, who works under the control and supervision of the employer. One cannot claim vacation or sick leave unless one is employed. One cannot claim notice pay without having worked in excess of one hundred and four weeks (104) weeks which was duly acknowledged in the letter of dismissal and paid for by being included in the company's cheque covering total payments due and calculated to be J\$18,335.80, which was encashed by Mrs. Grant.

The Representative contends that, the company did not follow the provisions of the Labour Relations Code and there was no evidence of natural justice as it had claimed there was no need for any hearing in that Mrs. Grant had taken over the cash without permission. In this regard there was no evidence that any guidelines existed neither that any misconduct took place. There is a difference between meeting and a hearing and in this case there is no evidence of either a meeting or a fair hearing being provided to Mrs. Grant.

A dismissal can be legal but unfair and while Mrs. Grant acknowledged that she was paid the legal requirements e.g. salary, pay for outstanding vacation and notice pay, her dismissal was unfair as Section 22, of the LRC was breached as none of the tenets was observed. Mrs. Richards only visited the May Pen branch on August 9, 2012 and handed the letter of dismissal to Mrs. Grant. The time lapse of settling the dispute is due to no fault of Mrs. Grant but to the Company at all levels of engagement, locally, at the MLSS and at the Tribunal.

The contention is that Mrs. Grant was unjustifiably dismissed and is seeking reinstatement with full salary from the date of dismissal and if not, that she be paid for the period of dismissal plus an additional year, a total of four (4) years.

TRIBUNAL'S FINDINGS:

The dispute was referred to the Tribunal by letter of September 25, 2014 and by letter dated October 1, 2014, the parties were invited to submit their briefs and subsequently efforts were made to commence hearing the matter. To date we have not received the brief from the company and several agreed dates scheduled for sittings had to be vacated, leading to the Tribunal having to dispatch its letter of June 25, 2015, advising of its intention to complete the matter on an "ex parte" basis, under Section 16A of the Labour Relations and Industrial Development Act (LRIDA).

Furthermore, at the sitting of September 11, 2015, it was agreed that the next meeting for closing would have been on September 25, 2015. That meeting also had to be vacated and a new date set for November 30, 2015. The Company or its representative did not turn up, as on the date we were advised that counsel had another matter in the Gun Court and would not be available for the entire day. The aggrieved worker's representative was allowed to present his closing and despite our telephone calls and writings ending with that of January 13, 2015 inviting the Company to attend or submit its closing in writing by January 28, 2016, to date no response has been received.

Consequently, the Tribunal is compelled to make its Award based on the evidence and submissions before it, without the benefit of the Company's closing address, as further continued delay is unfair to the other party to the dispute.

The Tribunal accordingly finds that despite the contention of Dangel that Mrs. Grant was employed on a temporary basis and that she was constantly told this, the overwhelming and uncontested evidence revealed that she was indeed a worker and enjoyed the relevant benefits afforded full time employees. Furthermore, it was the evidence of Mrs. Richards

that at the time of Mrs. Grant's pregnancy, Mr. Richards, her husband instructed her to put Mrs. Grant on staff.

Regarding absences from work, Mrs. Richards gave evidence that Mrs. Grant was continuously at work from the date of employment to the date of dismissal, except when she went on vacation or sick leave, which were all approved. There is not one tittle of evidence that was provided to confirm that her tenure was temporary, that she had requested a transfer to the Kingston office after her first term relief of the regular cashier and that she was constantly reminded that there was no position for her and that she was being kept on for humanitarian reasons.

She was a regular member of staff who went on approved vacation and maternity leave and when her health conditions warranted extensions, she applied and obtained approval. She was given a resumption date which she observed and would not have been required to make a prior announcement of her return. She also assumed her normal role of cashiering and took over the cash by the procedure she was accustomed to. No evidence of a written policy was provided and Mrs. Grant's unquestioned statement was that the practice from her initial employment was the one utilized on her return to work. Of note, is the fact that no discrepancy was reported in the questioned unauthorised taking over of the cash, using the method employed. Mrs. Grant reported to a manager at the May Pen branch and there was no evidence that he/she objected to her resuming her post and or the manner in which she took over the cash.

While Mrs. Richards contends that she had spoken to Mrs. Grant by telephone on August 8, 2012, Mrs. Grant denied this but both are in agreement that Mrs. Richards visited the branch on August 9, 2012 and gave her the letter of termination. This was without any discussions, hearing or meeting. Mrs. Richards admitted that no hearing or appeal was held between the parties except at the Ministry of Labour & Social Security, where she Mrs. Richards, failed to attend all the meetings and efforts to settle the dispute were unsuccessful. She also said that the breach of taking over the cash was considered to be

so severe that there was no need to have a hearing. The Tribunal strongly disagrees with this position.

Taking into consideration all the circumstances, from the evidence provided we conclude that the dismissal of Mrs. Grant was poorly handled, without any regard for the Labour Relations Code (LRC) and the observance of the rules of natural justice. Given the circumstance where the company claimed that they no longer had need for Mrs. Grant's services and based further on the claimed effects on the business by the downturn in the economy, they could have resorted to the provisions of the Employment Termination and Redundancy Payment Act.

We find that the action of the company was a total breach of the established procedures provided for under section 22 of the LRC which the LRIDA Section 3(4) refers to when dismissing an employee and as such the termination of Mrs. Grant is unjustifiable. The Tribunal therefore makes the following award.

AWARD:

The Tribunal awards that the termination of the contract of employment of Mrs. Tanique Grant is unjustifiable and in accordance with Section 12 (5) (iii) of the Labour Relations and Industrial Disputes Act (1975) order that Dangel Auto Spares & Accessories Limited:

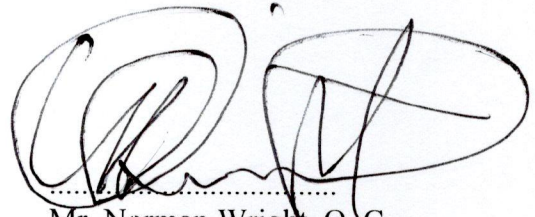
(a) reinstate Mrs. Grant in her employment on or before February 15, 2016 with payment of 24 months' salary at the current rate for the position she held at the time the contract of employment was terminated.

Or

(b) on failure to act in accordance with (a) pay Mrs. Grant, compensation with a sum being the equivalent of 36 month's

salary at the current rate for the position she held at the time the contract of employment was terminated, as full and final relief.

DATED THIS 3rd DAY OF FEBRUARY 2016.



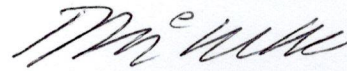
Mr. Norman Wright, Q. C.

Chairman



Mr. Rion Hall

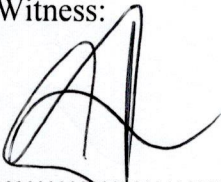
Member



Mr. D. Trevor McNish

Member

Witness:



Gary Ledgard

Secretary to the Division