

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 23/2015

SETTLEMENT OF DISPUTE

BETWEEN

EVERGLADES FARMS LIMITED

AND

MR. CALVIN WILLIAMS

AND THE

AWARD

I.D.T. DIVISION

MR. DONOVAN HUNTER - CHAIRMAN

MR. LESLIE HALL - MEMBER

MR. CLINTON LEWIS - MEMBER

JANUARY 22, 2016

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

EVERGLADES FARMS LIMITED

(THE COMPANY)

AND

MR. CALVIN WILLIAMS

(THE AGGRIEVED)

REFERENCE:

By letter dated September 2, 2015 the Honourable Minister of Labour and Social Security pursuant to Section 11A (1)(a)(i) of the Labour Relations and Industrial Disputes Act of 1975 (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 the Mr. Calvin Williams on the one hand and Everglades Farm Limited 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. Donovan Hunter - Chairman
- Mr. Leslie Hall - Member, Section 8(2) (c) (ii)
- Mr. Clinton Lewis - Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF PARTIES:

The **Company** was represented by:

- Ms. Debbie-Ann Gordon - Attorney-at-Law
- Mr. Allan Milbourne - General Manager

The **Aggrieved worker** was represented by:

- Mr. Humes Innis - Industrial Relations Consultant

In attendance was:

- Mr. Calvin Williams - Aggrieved worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by the parties and oral submissions made during three (3) sittings, from November 2, 2015 to January 6, 2016.

BACKGROUND TO THE DISPUTE:

On July 15, 2014 it is alleged that a violent altercation developed between Mr. Williams and one of his co-worker for which he was suspended. Following an investigation into the matter, Mr. Williams was subsequently dismissed by letter dated August 8, 2014 for willful and vicious attack with a machete on his fellow employee.

CASE FOR EVERGLADES FARMS LIMITED:

Calvin Williams was engaged by Everglades Farms Limited by virtue of a written contract of employment dated October 11, 2011 as a Mill Operator.

On July 15, 2014 Mr. Vivian Wisdom, Distillery Manager was informed of a violent altercation between Mr. William and his co-worker, Mr. Marcus Lobban. Mr. Williams was by way of letter dated July 15, 2014 placed on suspension pending outcome of an investigation on the matter.

Mr. Leslie Johnson, Delegate from the University and Allied Worker's Union (UAWU) which represents the bargain unit of which Mr. Williams was a member was given a copy of the suspension letter. Mr. Johnson signed the letter acknowledging receipt and informed Mr. Williams upon learning the date of the hearing.

Weeks leading up to the disciplinary hearing a thorough investigation was done into the matter. Written statements were taken from persons who witnessed the incident. On August 5, 2015 pursuant to the suspension letter, a disciplinary hearing was held. The meeting was chaired and attended by Mr. Allan Milbourne, General Manager and Mark Middleton, General Manager of Hampden Distillery which persons were completely independent of and uninvolved in the incident. These representatives were therefore well suited and capable of reaching an unbiased and a fair decision regarding the truth of the allegations and Mr. Williams' culpability. The meeting began with Mr. Middleton citing the charges against Mr. Williams and Mr. Lobban.

Charges were made under the Company's Code of Conduct with fighting, assaulting, provoking or injuring another employee at his/her work area and inciting or encouraging dispute which may lead to assault or fight. Page 5 of Everglades Code of Conduct stipulates that the maximum penalty of each is dismissal.

Signed statements from Mr. Williams, Mr. Lobban and two witnesses, Mr. Carlton Gray, a groundsman and Mr. Glenford Rose, a Distillery Exercise Officer were produced and considered in the meeting. Furthermore, Mr. Vivian Wisdom, who witness part of the incident gave an oral account of his observations.

From these accounts and the evidence produced in the course of previous investigations, the following findings were made:

- (i) an argument arose between Mr. Williams and Mr. Lobban on the morning of July 15, 2014 which involved Mr. Williams brandishing a machete. Mr. Wisdom diffused the

situation and sent both parties to their posts with a warning that they should desist from such behaviour,

- (ii) however, around lunch time, Mr. Lobban and Mr. Williams got into another physical altercation wherein Mr. Williams repeatedly chopped Mr. Lobban with a machete. Mr. Lobban sustained several injuries that were visible at the time of the disciplinary hearing of August 5, 2014.

In view of these findings and especially because his actions could have resulted in grave injury or even death of his co-worker, the decision was taken to terminate the services of Mr. Calvin Williams by letter dated August 8, 2014.

CASE FOR MR. CALVIN WILLIAMS (THE AGGRIEVED):

Mr. Williams was employed by Everglades Farms for over five (5) years as a Labourer. While at work on July 15, 2014, a co-worker name Marcus Lobban was accused of stealing some items from the area where Mr. Williams operates a business by selling things. This allegation was confirmed by Mr. Lobban. Subsequently, there was an argument between Mr. Williams and Mr. Lobban where he, Mr. Lobban threatened him.

Later that day, while at lunch Mr. Williams rode his bicycle out of the compound to purchase lunch at a cook shop. As Mr. Williams enter the cook shop area, Mr. Lobban verbally attacked him and proceeds to throw stones at him. One of the cook shop operators tried to shield Mr. Williams but Mr. Lobban was still in hot pursuit. He, Mr. Williams ran, with Mr. Lobban in hot pursuit still throwing stones. Mr. Lobban still proceeded to attack Mr. Williams with a knife and in a bid to defend himself he used a machete that was beside the cook shop to ward off the attack from Mr. Lobban. Mr. Lobban sustained a cut in his forehead. Mr. Williams was suspended from duty from that day until August 4, 2014 when he was told by the Distillery Manager that he should attend a meeting on August 5, 2014 at 10:00 a.m.

It is the Aggrieved Worker's contention that he did not receive a letter of suspension or a letter inviting him to a disciplinary hearing. He was not charge with any offense nor was he given the right to choose his representative. During the meeting on August 5, 2014, the Company called

representatives from the University and Allied Workers Union without asking Mr. Williams if he was in agreement. He was not prepared and that was communicated to the Company but they refused to postpone the meeting.

TRIBUNAL'S RESPONSE:

The evidence is clear that Mr. Calvin Williams physically assaulted his co-worker, Mr. Marcus Lobban with a machete thereby, causing injury to Mr. Lobban. In this instance, the Company had every right to have taken disciplinary action against Mr. Calvin Williams. Mr. Williams' behaviour in this instance reflected gross misconduct. In fact, the act of assault causing bodily injury is covered by statute hence, it's an unlawful act. The Tribunal notes that subsequent to Mr. Williams' dismissal he appeared before the courts and was sentenced to eighteen (18) months in prison. However, the sentence was suspended for two (2) years with supervision and that he would attend anger management sessions.

No Company should condone this type of behaviour. Management has the responsibility of securing the safety of its employees from the behaviour of other employees who conduct themselves with abnormal behaviour.

Procedural Matters

The Consultant for the aggrieved submitted that Mr. Williams did not have his own representation at the hearing on the basis that he was not associated with the Union. The Tribunal notes that there is no credible evidence in support of this argument.

In disciplinary matters, it is the norm that the management will meet with the accused along with the Union Delegate. If Mr. Williams had not wanted to be represented by the Union he should have informed the Management and the Union preferably in writing that it was his wish. There is no credible evidence that this was done. In fact he tacitly accepted the representation of the delegates.

The Tribunal accepts the evidence of Mr. Milbourne that near the end of the meeting, the Delegate requested of the management that mercy be applied in meting out punishment to both Mr. Williams and Mr. Lobban.

Mr. Williams under cross examination submitted that he did not receive a letter of suspension. However, it was submitted in evidence by the company that the letter of suspension was given to Mr. Leslie Johnson, a delegate of UAWU who acknowledged receipt of the letter and informed Management that he would inform Mr. Williams of the date of the hearing which he did. This evidence was not challenged by the Aggrieved (See Exhibit 1).

Mr. Williams further informed the Tribunal under cross examination that he did not receive a letter inviting him to a disciplinary hearing. It was also his evidence that on August 4, 2014, Mr. Vivian Wisdom came to his home and informed him that he should attend a disciplinary hearing the following date (August 5, 2014). The Tribunal is of the view that Mr. Williams was well aware of the charges he was required to answer to.

The Tribunal has concluded that Mr. Williams received a fair and proper hearing.


AWARD

The Tribunal finds that Mr. Calvin Williams was justifiably dismissed.

DATED THIS 22nd DAY OF JANUARY 2016




Witness:


.....
Royette Creary
Secretary to the Division


.....
Donovan Hunter
Chairman


.....
Leslie Hall
Member


.....
Clinton Lewis
Member