

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 14/2015

SETTLEMENT OF DISPUTE
BETWEEN
NICY GROCERY STORE AND BAR
AND
MS. HYACINTH WHITELY
AND THE
AWARD
I.D.T. DIVISION

Mr. Charles Jones, C.D., J.P.	–	Chairman
Mr. Leslie Hall	–	Member
Mr. Dwight Nelson, C.D., J.P.	–	Member

AUGUST 30, 2016

IDT 14/2015

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**NICY GROCERY STORE AND BAR
(THE BUSINESS)**

AND

**MS. HYACINTH WHITELY
(THE AGGRIEVED WORKER)**

REFERENCE:

By letter dated May 19, 2015, 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 Nicy Grocery Store and Bar on the one hand and Ms. Hyacinth Whitely 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. Charles Jones, C.D., J.P.	–	Chairman
Mr. Leslie Hall	–	Member, Section 8(2) (c) (ii)
Mr. Dwight Nelson, C.D., J.P.	–	Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

Mr. Lewelyn Spaulding	–	Proprietor
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The **Aggrieved Worker** was represented by:

Mr. Howard Duncan	–	Industrial Relations Consultant
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In attendance was:

Ms. Hyacinth Whitely	–	The Aggrieved Worker
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SUBMISSION AND SITTINGS:

The Aggrieved party was the only party to submit a Brief. Five Sittings were convened to hear this matter from September 16, 2015 to July 6 2016. No representative from the Nicy Grocery Store and Bar (referred to as the Business) was in attendance at the first three sittings convened on September 16 and October 7, 2015 and February 26, 2016 and therefore the Tribunal could not proceed.

At the third attempt on February 26, 2016 the Tribunal set a new date of March 24, 2016 for the matter to be heard and made the decision that should the Business' representative(s) fail to attend on that occasion the matter would be heard *ex parte*.

The parties were so advised.

On March 24, 2016, Mr. Lewelyn Spaulding, Proprietor of Nicy Grocery Store and Bar, attended and advised the Tribunal that his Attorney, Mr Sean Kinghorn of Kinghorn & Kinghorn, was not available on that day.

The Tribunal encouraged the parties to consider engaging in talks at the local level to resolve this matter. They were advised that if this course of action was pursued and no agreement reached, then the Tribunal would commence hearing the matter on July 6, 2016.

On July 5, 2016, Mr Kinghorn communicated to the Tribunal a request for a postponement of the sitting. This was not granted and he was advised verbally and in writing that should he or a representative fail to attend on July 6, 2016, the matter would be heard *ex parte*.

On July 6, 2016 no representative of the Business attended and in keeping with its earlier decision, the Tribunal proceeded to hear this matter *ex parte*.

PARTIES TO DISPUTE:

Nicy Grocery Store and Bar is a business in the parish of St. Catherine, engaged in the sale of grocery items and liquor. The business is operated by Mr. and Mrs. Lewelyn Spaulding (the Proprietors).

Miss Hyacinth Whitely was employed to the business place as a Bartender.

BACKGROUND TO THE DISPUTE:

It was reported that on July 6, 2014 Miss Whitely who was on her day-off was summoned to the business place and following a physical altercation with Mr. Spaulding, the Proprietor, she was advised by his wife Mrs. Maureen Spaulding that her services were terminated.

Miss Whitely engaged the services of Mr. Howard Duncan, Industrial Relations Consultant, in an effort to seek redress.

There was no response to a letter of appeal sent to the Proprietors and subsequently the matter was referred to the Ministry of Labour and Social Security for conciliation. The conciliation effort by that Ministry failed and consequently, the Honourable Minister of Labour and Social Security referred the matter to the Industrial Disputes Tribunal for settlement.

THE BUSINESS'S CASE:

The Business' case could not be heard as no representative was present.

THE AGGRIEVED WORKER'S CASE:

Mr. Howard Duncan, Industrial Relations Consultant, who presented the case for the Aggrieved, contended that Nicy Grocery Store and Bar had breached the Labour Relations Code and the principles of natural justice and that her termination could only be classified as unfair and unjustifiable.

He called Miss Whitely as his only witness.

Miss Whitely in her testimony said that she was employed to the Nicy Grocery Store and Bar since January 2013. On July 6, 2014 she was at home on her day-off when she received a call from Mrs. Maureen Spaulding who used expletives to her while requesting her to come to the business place. On her arrival she was asked about some receipts for purchases she had made the previous day. Following verbal exchanges between herself and the Spauldings she was physically assaulted by Mr. Spaulding. As a result, the Police attended the scene. Following this altercation, she was advised by Mrs. Spaulding that her services were terminated.

Miss Whitely said that she had never received a letter of appointment, neither a letter of dismissal. She had received no vacation leave during her employment nor had she received notice pay on the termination of her services.

TRIBUNAL'S DELIBERATION:

Following deliberation, the Tribunal noted that based on the evidence heard, Miss Whitely's services were terminated without due recognition of the Labour Relations Code which addresses the rights of a worker. Members, therefore, concluded that the termination of Miss Whitely's service in the manner in which it was effected, rendered it unjustifiable.

AWARD:

The Tribunal awards that Miss Whitely should be compensated by the Proprietors of Niccy Grocery Store and Bar (Mr. & Mrs. Spaulding) in the amount of One Hundred Thousand Dollars (\$100,000).

DATED THIS 30TH DAY OF AUGUST 2016.



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Charles Jones, C.D., J.P.
Chairman

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Mr. Leslie Hall
Member

WITNESS:

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Nicola Smith Marriott (Mrs.)
Secretary to the Division

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Mr. Dwight Nelson, C.D., J.P.
Member