

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 31/2015

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## SETTLEMENT OF DISPUTE

BETWEEN

PORT SECURITY CORPS LIMITED

AND

MISS SHAOLIN SINCLAIR

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 4, 2016

**IDT 31/2015**

**INDUSTRIAL DISPUTES TRIBUNAL**

***AWARD***

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**PORT SECURITY CORPS LIMITED  
(THE COMPANY)**

**AND**

**MISS SHAOLIN SINCLAIR  
(THE AGGRIEVED WORKER)**

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**REFERENCE**

By letter dated September 14, 2015, the Honourable Minister of Labour and Social Security in accordance with 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 to the Tribunal are as follows:

***“To determine and settle the dispute between Ports Security Corps Limited on the one hand and Miss Shaolin Sinclair 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   |
| Mr. Dwight Nelson, C.D., J.P. | – | Member   |

## **REPRESENTATIVES OF THE PARTIES**

The **Company** was represented by:

|                                    |   |                        |
|------------------------------------|---|------------------------|
| Lt. Col. Derek P.F. Robinson, J.P. | – | Managing Director      |
| Miss Paulette Watson               | – | Human Resource Manager |

The **Aggrieved** was represented by:

|                     |   |                 |
|---------------------|---|-----------------|
| Ms. Dameta C. Gayle | – | Attorney-at-Law |
|---------------------|---|-----------------|

In attendance was:

|                       |   |                  |
|-----------------------|---|------------------|
| Miss Shaolin Sinclair | – | Aggrieved Worker |
|-----------------------|---|------------------|

## **SUBMISSIONS AND SITTINGS**

Briefs were submitted by the parties and oral submissions made during six (6) Sittings, from October 22, 2015 to July1, 2016.

## **BACKGORUND TO THE DISPUTE**

### **Port Security Corps Limited**

The Port Security Corps Limited (the Company) is a government agency charged with the security responsibilities for the seaports in Kingston and Montego Bay as well as the two international airports and the Tinson Pen Aerodrome.

### **Miss Shaolin Sinclair**

Miss Shaolin Sinclair was employed as a Security Officer to the Port Security Corps Limited.

It was reported that on Sunday, January 25, 2015 Miss Sinclair left her assigned work location unmanned and consequently three disciplinary charges were proffered against her. A Disciplinary Hearing was convened following which the services of Miss Sinclair were terminated with effect from April 8, 2015.

Miss Sinclair decided to contest the justification for her dismissal and engaged the services of Ms. Dameta C Gayle, Attorney-at-law to represent her. The Attorney filed an appeal to the Operations Manager, Port Security Corps Limited and later reported the matter to the Ministry of Labour and Social Security but 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.

## **COMPANY'S CASE:**

The Company was represented by Managing Director, Lieutenant Colonel Derek Robinson, who argued that the dismissal was justified based on the following:

- i. "The Corps provides service to its Client on a shift basis at the location at which Ms Sinclair was posted (General Aviation Facility) from 7 am to 11 pm.*
- ii. Ms Sinclair left the post without being relieved, a fact she admitted.*
- iii. Procedure was adhered to in arriving at the decision.*

iv. *Ms Sinclair had representation except for the meeting when the charges were laid when she represented herself. It is to be noted that no action was taken against her at this stage as the matter was referred to the Location Manager."*

The Company called as witnesses Ms. Sandra Dillon, Senior Supervisor, Mrs. Marcia Barrett-Pusey, Senior Supervisor and Ms. Sophia Shields, Location Manager.

Ms. Dillon testified that Miss Sinclair had initially asked to be relieved as her children were left at home alone. However, Ms. Dillon failed to inform the incoming Supervisor, Mrs. Barrett-Pusey.

Mrs. Barrett-Pusey testified that when she became aware of Miss Sinclair's request, she informed Miss Sinclair that there was no one to relieve her and also told her that she should not leave her post until she was relieved. She also stated that after she had spoken with Miss Sinclair, Mr. David Chin of Aeronautical Information Services had reported that he was locked-in and could not exit the building. This happened despite the fact that she had told Miss Sinclair not to leave her post until she was relieved.

The Company also called Miss Paulette Watson, Human Resource Manager as a witness. She gave evidence that the pass issued to Miss Sinclair by the Norman Manley International Airport, which allowed her access to the building, was revoked. She, however, also testified that the reason for the termination of Miss Sinclair's appointment was because she had abandoned her post.

Lieutenant Colonel Robinson in his closing remarks stated that the Company was not insensitive to the needs of its employees in emergency situations but in this instance, Miss Sinclair's action was in breach of the Port Security Disciplinary Code which had been firmly established.

### **THE AGGRIEVED WORKER'S CASE:**

The Attorney representing Miss Sinclair stated that *"the essential question for the Honourable Tribunal is firstly, whether, Miss Sinclair was unfairly terminated in light of the facts presented, secondly, whether the employer acted reasonably in dismissing the employee and finally whether the decision is justifiable in fact and in law."*

Miss Sinclair was called as a witness. She stated that she had accessed a message on her phone from her sister in whose care she had left her two children, advising that she was leaving the home and would not be returning for the night. She said she called and asked her neighbour to watch over her children until she reached home.

Consequent to the message, Miss Sinclair testified that she called Ms. Dillon, Senior Supervisor at 5:30 p.m., requesting to be relieved. She stated that she also called Mrs. Barrett-Pusey at 8:40 p.m. and she told her that there was no one to relieve her. Miss Sinclair further stated that she advised her that Mr Glenford Williams had agreed to relieve her but was told that on account of the location to which she was posted, she could not be relieved by a male officer. She stated that she then advised Mrs Barrett-Pusey that she was going to leave.

Miss Sinclair said she had also spoken to Mr. David Chin, an employee of the Aeronautical Information Services and told him that she was going to close the General Aviation Facility Area and that he had said that he only needed to know that he could exit the building whenever he was ready to leave.

She said that she left her post at 10:32 p.m. and attempted to hand over the key to Mrs. Barrett-Pusey who did not accept it, following which she went to the Tinson Barrier, left the key and departed on the 11:00 p.m. bus.

The Attorney submitted that:

*"Ms Sinclair was not dismissed for a just cause; rather she was a victim of politics. She could not be relocated, she had lost her pass and the Company was forced to*

*take a decision. The Company therefore attempted to have her dismissed on the grounds stated in their brief. Despite the testimony of Ms. Watson that the withdrawing of the pass had nothing to do with it, it is clear that it was a great consideration."*

*She further submitted that "Ms Sinclair did not in fact breach any of the provisions under which she was charged. The Code required notification in the case of an emergency. Her emergency was that her children were home alone and devoid of adult supervision, which could have led to detrimental outcomes, for which she could have faced criminal charges. It is clear that there was an emergency; she gave notification, prior to the expiration of her shift to her outgoing and incoming supervisors, who failed to act reasonably in addressing her requests. The same powers that be then charged her and dismissed.*

*It is our submission that the Port Security Corp Limited acted unreasonably regard being had to all the circumstances and out of keeping with the Port Security Disciplinary Code and therefore had no basis on which to dismiss Ms. Sinclair. The dismissal was therefore unjustifiable in fact and in law."*

### **TRIBUNAL'S DELIBERATIONS:**

The Tribunal in its deliberations noted that the crux of the dispute was that on Sunday, January 25, 2015 Miss Sinclair left her post at the Norman Manley International Airport without being relieved.

It was determined from the evidence presented that Miss Sinclair who was on duty on the 3.00 p.m. to 11.00 p.m. shift received a message from her sister in whose care she had left her children advising her that she would be going out and not returning for the night. She requested to be relieved and notwithstanding her not being granted this release locked the door at her assigned work location and left. This resulted in an employee of Aeronautical Information Services being unable to leave his work station as there was no one to open the door to allow him to leave. The employee subsequently made a report to

this effect.

Members examined carefully the submission of Miss Sinclair's Attorney as stated above. Members also examined Appendix 1 - Section 1.0 of the Ports Security Corps Limited Disciplinary Code & Grievance Procedures which states:

***"ABANDONING LOCATION/PLACE OF DUTY***

*Any officer who leaves his location without authorization or in a case of emergency by notification, whether for a brief or extended period shall be deemed to be in breach of contract, and this will be interpreted as permanent abandonment (the integrity of the officer will impact the decision)."*

The Tribunal did not support the notion submitted by the Attorney that notification of an emergency gave the employee the right to leave his/her post without being relieved, and Members noted that Miss Sinclair in response to a question during cross examination described her work location as a very sensitive area.

The Tribunal was of the view that the Company's administrative handling of requests for relief needed to be reviewed. However, the Tribunal was not in agreement that notification of an emergency gave the employee the right to leave his/her post without being relieved. Although there was mention of an emergency, Members were not presented with any evidence that proved there was an emergency and noted that Miss Sinclair in her testimony stated that she had requested her neighbour to oversee the children. Consequently her children were not unsupervised.

Members agreed that Miss Sinclair had indeed committed a breach of the Company's rules and regulations in abandoning her post and that her actions could have compromised security at the location.

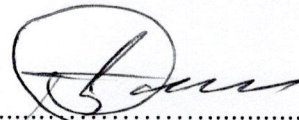
**FINDINGS:**

The Tribunal considered carefully the reason given by Miss Sinclair for leaving her post without being relieved, but could not divorce its mind from the fact that she was posted for duty in a sensitive area of an international airport. The Tribunal concluded that Miss Sinclair had acted irresponsibly and that her dismissal is justifiable.

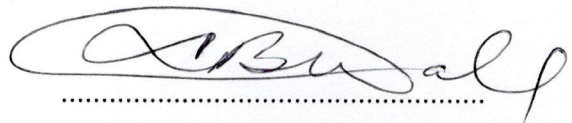
**AWARD:**

The dismissal of Miss Sinclair is justifiable.

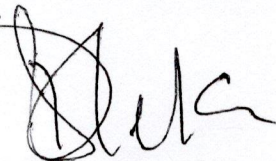
DATED THIS 4<sup>TH</sup> DAY OF AUGUST, 2016.



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



.....  
Mr. Leslie Hall  
Member



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

**WITNESS**



.....  
Nicola Smith Marriott (Mrs.)  
Secretary to the Division