

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 20/2016

SETTLEMENT OF DISPUTE
BETWEEN
PREMIER WASTE MANAGEMENT
AND
MR. ROBERT RHODEN
AND THE
AWARD
I.D.T. DIVISION

MR. DONOVAN HUNTER	-	CHAIRMAN
MR. ERROL BECKFORD	-	MEMBER
MR. CLINTON LEWIS	-	MEMBER

JULY 26 2016

IDT 20/2016

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**PREMIER WASTE MANAGEMENT
(THE COMPANY)**

AND

**MR. ROBERT RHODEN
(THE AGGRIEVED)**

REFERENCE:

By letter dated April 29, 2016, 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 Premier Waste Management on the one hand and Mr. Robert Rhoden 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. Errol Beckford - 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. Trevor Bernard - Managing Director
- Mr. Winston Muirhead - Driver

The **Aggrieved** was represented by:

- Mr. Elvis Lennon - Industrial Relations Consultant

In attendance was Mr. Robert Rhoden, Aggrieved worker

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during one (1) sitting held on June 7, 2016.

BACKGROUND BASED ON BRIEFS AND SUBMISSIONS MADE:

Premier Waste Management is a Garbage Disposal Company involved in the collection and disposal of waste. Mr. Robert Rhoden was employed to Premier Waste Management as a Maintenance Worker. On July 27, 2015 an altercation developed between Mr. Winston Muirhead, Driver and Supervisor of the Company and Mr. Rhoden. Following the altercation, Mr. Rhoden alleged that he was dismissed and the Company's position was that Mr. Rhoden had abandoned his job.

CASE FOR THE COMPANY:

Sometime in July 2015, Mr. Trevor Bernard, the Managing Director received a report about an altercation that took place between Mr. Muirhead and Mr. Robert Rhoden, a member of the crew working on the truck.

One of the disposal trucks was driven by Mr. Winston Muirhead who is in charge of the crew working on the truck. Mr. Rhoden insisted on wearing a bag on his back in order to put valuable scraps of garbage in it for his own purposes. Mr. Muirhead on several occasions had instructed Mr. Rhoden not to wear the bag because it hampers his ability to carry out his duties in an efficient manner, but he refused to comply. On one occasion an argument ensued between both men. The Managing Director spoke to both men and suggested that a meeting be held to resolve their differences. However, while Mr. Muirhead was willing to attend the meeting, Mr. Rhoden said he would not attend. A meeting was set for a second time but Mr. Rhoden failed to attend.

It is the management's position that they had not seen Mr. Rhoden since the time of the incident. Hence, they were surprised when they were contacted by the Ministry of Labour over the termination of Mr. Rhoden's employment when in fact he was not terminated by anyone. The management then concluded that he had abandoned his job.

CASE FOR THE AGGRIEVED:

Mr. Robert Rhoden was employed to Premier Waste Management Limited as a Maintenance Worker in May 2008. On July 27, 2015 he had a meeting with Mr. Trevor Bernard and Mr. Winston Muirhead.

Mr. Muirhead on previous occasions had altercations with Mr. Rhoden. On one occasion Mr. Muirhead took a stick to hit him Mr. Rhoden, and the incident was reported to the Hunts Bay Police Station.

At a meeting on the 27th July 2015, Mr. Bernard told Mr. Rhoden that it would be easier for him to dismiss him, Mr. Rhoden than to dismiss Mr. Muirhead because maintenance workers are easier to come by. The driver in that meeting threatened to resign.

The following day, July 28, 2015, Mr. Rhoden reported to work, however, someone else was in his position. In spite of this he continued to show up for work. On July 31, 2015, Mr. Rhoden was told by the driver that he was dismissed. He reported to work the following day, but no duties were assigned to him.

On August 3, 2015, he reported the matter to the Ministry of Labour and Social Security (Pay & Conditions of Employment Unit) but got no redress. He hired a consultant and reported the matter to the Industrial Relations Department at the Ministry of Labour.

TRIBUNAL'S RESPONSE:

Findings of facts:-

- (1) **No reporting system** - Although Messers Bernard and Muirhead gave evidence regarding the incident between Messrs. Muirhead and Rhoden, they had difficulty in remembering the precise date the incident occurred. The Tribunal had to subsequently rely on the date produced by Mr. Rhoden, that date being 27th July 2015. To overcome a repeat of this error a proper reporting system should be put in place in order to deal with potential disciplinary issues. (see Labour Relations Code)
- (2) **The incident** - On July 27, 2015 whilst operating a garbage disposal truck an altercation arose between Mr. Muirhead, the driver and supervisor and Mr. Rhoden, a member of the crew. Mr. Rhoden was observed by Mr. Muirhead dislodging chicken waste from containers

and positioning himself in on unsafe manner while the truck was in motion. Mr. Muirhead spoke to him about his failure to cease and desist from carrying out such action, but he did not get the cooperation he considered appropriate in this instance. Mr. Muirhead called Mr. Bernard the Managing Director and reported the incident.

The Meeting:

Mr. Bernard informed Mr. Rhoden that there would have to be a meeting to resolve this matter but Mr. Rhoden's response was that he would not attend a meeting with Mr. Muirhead present and left.

The Tribunal accepts that that was the last time the company had heard from Mr. Rhoden until the Ministry of Labour wrote to the company. Mr. Rhoden denies that he was told to attend a meeting, but the Tribunal does not accept this. There is corroboration between the evidence of Messrs. Bernard and Muirhead that he was told and he walked away while saying he would not be attending any meeting with Mr. Muirhead. Mr. Rhoden in evidence admitted that it is normal to have meetings to settle disputes.

Abandonment or Termination:

The Tribunal accepts the evidence of Mr. Bernard that he had not heard from Mr. Rhoden after the 27th July 2015 until the Ministry of Labour contacted him. It was at that point he concluded Mr. Rhoden had abandoned his job.

The evidence of Mr. Rhoden supports Mr. Bernard's position. Mr. Rhoden may have gone to the compound on July 28, 29, 30, August 1, 2 and 3, 2015 but there is no evidence he reported to anyone, and most importantly he had a meeting he was supposed to attend which he took the decision not to attend.

CONCLUSION:

Mr. Rhoden, having been informed by Mr. Bernard, the Managing Director to attend a meeting in order to resolve differences between himself and Mr. Muirhead, flatly refused to attend. Mr. Rhoden may have visited the company's premises on the dates he said he did but he did not report to either Mr. Bernard, the Managing Director or Mr. Muirhead, the driver of the truck.

If Mr. Rhoden concluded he was terminated from his job then he should have at first sought a meeting with Mr. Bernard to ascertain his status but he did not. He initially sought the intervention of the Ministry of Labour and Social Security. Up to that point Mr. Bernard was not aware of an established dispute over an alledged termination. The Tribunal shall refer to Section 6(2) of the Labour Relations and Industrial Disputes Act to bring clarity to the process of settling disputes as laid out in the act.

(2) the implied procedure shall be-

- (a) the parties shall first endeavour to settle any dispute or differences between them by negotiation;*
and
- (b) where the parties have tried, but failed, to settle a dispute or difference in the matter referred to in paragraph (a) any or all of them may request the Minister in writing to assist in settling it by means of conciliation; and*
- (c) all the parties may request the Minister in writing to refer to the Tribunal for settlement any dispute or difference which they tried, but failed, to settle by following the procedure specified in paragraphs (a) and (b).*

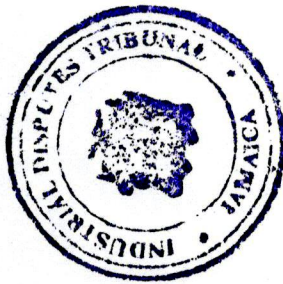
The steps must be sequentially followed.

The evidence is clear he abandoned his job thereby repudiating his contract of employment.

AWARD:

- (a) Mr. Robert Rhoden was not terminated from his job
- (b) Mr. Robert Rhoden abandoned his job, thereby repudiating his contract of employment

DATED THIS 26th DAY OF JULY 2016



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Donovan Hunter
Chairman

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Errol Beckford
Member

.....
Clinton Lewis
Member

Witness:

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Royette Creary
Secretary to the Division