

15
INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 53/2013

SETTLEMENT OF DISPUTE

BETWEEN

VAUXHALL HIGH SCHOOL

AND

UNION OF SCHOOLS' AGRICULTURAL & ALLIED WORKERS

AND THE

AWARD

I.D.T. DIVISION

MR. NORMAN WRIGHT, Q.C.	-	CHAIRMAN
MR. RION HALL, J.P.	-	MEMBER
MR. D. TREVOR MCNISH	-	MEMBER

APRIL 28, 2015.

IDT 53/2013

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

VAUXHALL HIGH SCHOOL

AND

UNION OF SCHOOLS' AGRICULTURAL & ALLIED WORKERS

REFERENCE:

By letter dated December 11, 2013 the Honourable Minister of Labour and Social Security pursuant to Section 11 A(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 the Vauxhall High School on the one hand and the Union of Schools' Agricultural & Allied Workers on the other hand, over the dismissal of Ms. Claudette Burton."

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, J.P.	-	Member, Section 8(2) (c)(ii)
Mr. D. Trevor McNish	-	Member, Section 8(2) (c)(iii)

REPRESENTATIVES OF PARTIES:

The **School** was represented by:

Mr Christopher Honeywell	-	Attorney-at-Law & Chairman of the School Board.
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In attendance were:

Miss Ellen Ritchie	-	Bursar
Mr. Andrew Silburn	-	Teacher

The **Union** was represented by:

Mr. Keith Comrie	-	General Secretary
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In attendance were:

Ms. Claudette Burton	-	Aggrieved Worker
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SUBMISSIONS AND SITTINGS:

A Brief from the Union of Schools Agricultural and Allied Workers (USAAW) and minutes of Vauxhall's Personnel Committee meetings of January 28 and February 1, 2011 were submitted by the parties and oral submissions made during eight (8) sittings, from August 18, 2014 to January 23, 2015.

BACKGROUND TO THE DISPUTE:

The Vauxhall High School held its Annual Staff Christmas Function at the Mona Visitors Lodge, Mona Campus UWI, on December 16, 2010. During the course of the evening's proceedings and returning from the dance floor, the Bursar, Miss Ellen Ritchie raised an alarm that her purse/pocket book which she had left on the table where she was sitting before, was missing. Several enquiries were made and the area searched but to no avail. When questioned, the waiters who had served the meals and who were responsible for the clearing of the tables, all claimed they did not see the purse. They however, indicated that they had seen a lady dressed in a black outfit and having a "scandal bag" in her hand, seated at the table at some time. From the description it was determined that it was one of the ancillary workers, Miss Claudette Burton.

Miss Burton, who was outside at this time was summoned but when asked if she had seen or taken the purse, denied both. She explained that she had wanted to leave and had gone into the bus which transported them to the venue in pursuit of having the driver taking her home. The search then continued outside and into the bus. Attendant to this, it was established that amongst the contents of the purse were Miss Ritchie's car and house keys, cell phone and cash. Consequently it was decided to call the cell phone to see if the purse was anywhere around. On doing so, the phone was heard ringing in nearby bushes which led to the finding of the purse.

Despite a warning cry from Mr. Silburn and other staff members for no one to touch the purse, Miss Burton picked it up thus negating any incriminating fingerprints. The contents of the purse were verified and it was found that all was intact, except that the cash was missing. The police were called and based on their intervention, the amount of the cash advised missing by Miss Ritchie was found in one compartment of Miss. Burton's bag. The police then invited the parties to the police station, where after further interrogation; they decided to press charges of "simple larceny" against Miss. Burton, who continued to insist that the cash belonged to her, having withdrawn it from her bank account, the day before. Prior to the arrest, however, Miss. Ritchie decided that if the cash was returned to her, she would forgo the police action, in an effort to thwart any embarrassment to the School's reputation and to have the matter dealt with internally, by way of Vauxhall's disciplinary procedures.

Consequently, the cash was given to Miss. Ritchie and a formal report made to the school's Principal the following day, December 17, 2010. Miss. Burton was then suspended, pending further investigation. Following the School's investigations, including the convening of two hearings and the submissions of written statements by eyewitnesses, it was concluded that Miss Burton was guilty of "Gross Misconduct" and was dismissed on February 10, 2011, in accordance with Section 25 of the Ministry of Education and Culture, Terms and Condition of Employment of the Non-Teaching Staff Act.

The matter was referred to the Ministry of Education by the USAAW, which responded by upholding the school's decision. It was then referred to the Ministry of Labour & Social Security, which failed to obtain a resolution, resulting in the reference to the IDT.

THE SCHOOL'S CASE:

The School only submitted copies of minutes of the hearings held before its Personnel Committee on January 28, and February 1, 2011, incorporating reported verbatim evidence from members of staff who witnessed the incident, in substitution of a Brief. Through this, direct evidence and oral submissions, they contended the following:

- Vauxhall High School Staff held its annual Christmas function on Thursday, December 16, 2010, at the Mona Visitor's Lodge, Mona Campus, of the University of the West Indies, Mona, Kingston 6.
- After a dinner meal which was served to patrons seated at various tables, several of them went on the dance floor to dance. One such person was Miss Ellen Ritchie.
- On completing dancing she returned to the table at which she had dined and realized that her 'gold coloured' purse which she had left on the table was missing.
- An alarm was made and several of the other staff members started to assist in searching for the purse. During the search, the waiters were asked if they had seen/removed the purse when cleaning the tables. They responded in the negative and advised, however, that they had observed a "lady" in a black dress and with a scandal bag in hand, sitting at the table with the purse on it.

- From the description given by the waiters, it was felt that the person was Miss Claudette Burton; however she was not in the area at the time. Miss. Ritchie by this time had made it known that it was Miss Burton who had taken the purse and that she should take it back. Miss Burton returned from outside and denied ever sitting at the table, seeing the purse, or taking it.
- The contents of the purse is said to include Miss Ritchie's cell phone and another member of staff, a teacher, Mr. Andrew Silburn, decided to call the phone in a further effort to locate the purse. The phone was called inside the building to no avail and having learnt that Miss. Burton was for some time in the bus outside, the search was extended there.
- The search of the bus and the calling of the cell phone there, revealed nothing. However, while still calling the cell phone outside the bus, in the area of the car park, a ringing was heard in the nearby bushes. An alarm was made and members of staff alerted to the location.
- The School's nurse, Miss Peart and Miss Burton were the first to locate the purse and having announced that it was seen, Mr. Silburn announced and this was repeated by others, that no one should touch the purse. Miss. Burton, however, picked up the purse and as a result was questioned and reprimanded as to why she had done so, when she would have heard that it should not be touched.
- By this time the police were on the scene and having been apprised of the matter, accompanied Miss Ritchie to the spot where the purse was located. The purse was checked and the contents found intact, except that the cash was missing. The police took possession of the purse and enquired of Miss Ritchie, as to its contents. She advised that it contained her car keys, house keys, approximately J\$1,950 in cash, give or take J\$100. This amount was made up of three (3) \$500, one (1) \$50 and the remainder in \$100 bills. It also contained the gate pass and some makeup. Miss Burton's purse was then checked and found to contain J\$250 in one compartment and \$2050 in another. Of significance was that the \$2050 was made up of the exact denomination as advised by Miss Ritchie, give or take J\$100.
- The police then invited the parties to the police station. Miss Burton and Miss Ritchie and Mr. Silburn, at the request of Miss Ritchie, went to the police station. There the police

took statements and advised that they were going to arrest Miss Burton on the charge of simple larceny. At this stage, Miss Ritchie, not wishing to cause the School any embarrassment, decided that if the cash was returned to her, she would forgo the police action and have the matter handled by the School. Miss Burton then took the cash from the police; apologised to Miss Ritchie and returned it to her. She, however, continued to maintain her innocence.

- On Friday, December 17, 2010, Miss Ritchie made a written report of the incident to the Principal of Vauxhall High School and subsequently, Miss Burton was suspended, pending investigations.
- Miss Burton by letter dated December 28, 2010, was advised of the allegation of “gross misconduct” for stealing Miss Ritchie’s purse and invited to appear before the School’s Personnel Committee, to answer to the charge. The Committee met on two days, January 28 and February 1, 2011, to which Miss Burton and representatives of her union, the USAAW, attended and participated in the hearing.
- Following the hearing, the Personnel Committee returned a finding of guilty against Miss Burton and based on their recommendation, the Board of Management by letter dated February 10, 2011, dismissed her for “Gross Misconduct” under Section 25, of the Ministry of Education and Culture, Terms and Conditions of Employment of the Non – Teaching Staff.

In summary it was submitted that:

- a) The issue is grounded on circumstantial evidence. While no one saw Miss Burton with the purse, based on the facts and coincidental evidence, when taken as a whole, it was viewed by the disciplinary panels as sufficient to arrive at the decision given.
- b) The relevant facts fall within the ambit of evidence.
- c) The ambit of Miss. Burton being at the table and the money in the purse being close to the denomination specified by Miss. Ritchie.
- d) The police actions, in keeping with an arrest for criminal intent, led to one drawing an adverse opinion.

All the above actions provide sufficient facts to show that it was reasonable to hold that Miss. Burton was guilty as charged and justifiably dismissed.

THE AGGRIEVED WORKER'S CASE:

Miss Claudette Burton commenced working at Vauxhall High School, as a Temporary Cleaner, in September 2002 and was made permanent on October 1, 2003, until she was wrongfully terminated for gross misconduct on February 10, 2010.

Miss Burton attended the School's annual Christmas function on Thursday, December 16, 2011, held at the Mona Visitors Lodge, Mona, Kingston 6. She went with a group of other co-workers in a bus and arrived around 7:00 pm. She sat at a table with other ancillary staff. When she went to dinner, she did not see Miss Ritchie. After dinner she was asked by the Assistant Bursar to do a dance on the stage to entertain the staff. She did not see Miss Ritchie on the dance floor.

After dancing, she went and sat down at the same table at which she had eaten. She then went to the bathroom with another ancillary worker. When she returned, the table was cleared and she went and sat there again. She did not know where the bus was at that time, because she was inside. She then returned to the dance floor and was dancing when she slipped and fell. A teacher assisted her to get up and placed her to sit at the same table. After that she went back on the stage and continued to dance, since she was the entertainer for the night. She became tired and when she saw the bus driver (Mr. Sugar) she told him that she wanted to go home. However, he said he would soon be ready.

She then went and started to pick up bottles, to fill a crate which she had brought on the bus. Two co-workers came to her and told her that Miss. Ritchie had lost her purse and that a waitress had said that she saw the purse on the table and further that, she Miss. Burton, was sitting there with a black scandal bag in her hand. She denied being at that table or taking the purse. When she heard somebody saying they had found the bag, she and the nurse went in the direction and heard the phone ringing. She found the bag and picked it up, at which time, the nurse asked her why she had done so, after which Miss. Ritchie grabbed it from her hands. She did not hear anyone saying that she should not touch the bag. The police came and told her to go in the car and she went to the police station. At the station, the police said

that they were going to arrest her but Miss. Ritchie said if she received her money, she would not want her to be arrested and would have the school deal with it.

Under cross examination, she claimed that, for the entire time she was at the function she had been sitting at the same table. At no time, did she see Miss. Ritchie sitting at that table. When the police asked her how much money she had in her bag she had told them she could not recall. At the police station, the police had asked if she had the bank book/statement to prove her claim as to how much cash she had in her bag. She said no, but she could produce it. She never gave it to the police but it was provided at the hearing at the School Board Committee.

After she was dismissed from Vauxhall, she did not work at Excelsior but at Tarrant High for eighteen (18) months up to August 2014. She does not know why she was asked to leave Tarrant High.

She did not accuse anyone of taking Miss. Ritchie's purse. She could not recall if she heard that Miss. Ritchie had accused her of taking the purse and she did not point a finger at anyone. She also could not recall Miss. Ritchie advising of the contents of the amount in her bag or the police asking her, Miss. Burton, of the contents of hers.

The Bursar of Tarrant High School, who is also the Treasurer of the USAAW, was called to indicate that Miss. Burton had worked at the school in the capacity of a contract janitor, in a temporary vacancy. She was terminated after the contract ended, even though the position remains vacant. She had been taken on at the request of the General Secretary of the USAAW, with whom he has a good relationship.

It was also contended that the disciplinary procedure which governs ancillary staff in the education system, was not followed in all aspects by the Board of Governors of Vauxhall High, as the Disciplinary Code calls for any breach outside of what is covered in the Code, to be dealt with in the Courts. She had a clean record of conduct for the period of her employment between 2002 to 2011. She was charged for gross misconduct but the Board failed to take into account the provisions of the Code which calls for such a charge to be based on "credible witnesses". None of the witnesses stated that they saw Miss. Burton

sitting at the table, none of them saw her with the purse and none could have identified the purse or given a description of it. She was quickly accused by Miss Ritchie.

At the hearing presided over by the Chairman of the Board, the Representative of the USAAW, was not given a chance to speak but was told only the accused would speak. When Miss Ritchie was asked of the contents of her purse she only gave an estimate. When Miss Burton picked up the purse, it was grabbed from her by Miss Ritchie. No one saw her open the purse. It is abnormal for one to leave valuable items unattended at a function. It is also clear that Miss. Burton did not touch the purse before she picked it up in the bushes. That was the only thing she could be accused of and that holds no substantial evidence to prove her guilty of gross misconduct or of any other offence. She was wrongly accused and charged.

THE TRIBUNAL FINDINGS:

The incident that took place at the staff Christmas function leading to the dismissal of Miss Claudette Burton, though in many ways circumstantial, was thoroughly investigated and opportunities provided for adequate responses and explanations before the final decision was made.

The evidence provided by the School, through its representative and witnesses, were consistent and in most cases irrefutable by the aggrieved party. All the evidence pointed to Miss Ritchie missing her purse after returning from the dance floor. This was followed by a general search by the staff members present. Miss Burton appeared to have been outside at that time. When the hotel staff was questioned they concurred that they did not remove the purse but pointed to the fact that a lady in a black dress with a scandal bag in her hand was sitting at the table. From this description, it was determined that it was Miss Burton.

Miss Burton, while denying that she was ever sitting at the table where Miss Ritchie sat, admitted that she had a scandal bag in which she intended to collect dog food.

All the persons who were in the vicinity of where the phone was heard ringing in the bushes, gave evidence of hearing the shouts that no one should touch it. Miss Burton, however, ignored the pleas and went and took up the purse. She claimed she never heard the calls and that it was only after she had picked up the purse that the nurse, Mrs. Peart, who was closest to her, asked her if she had not heard that no one should touch it.

The money found in one compartment of Miss Burton's purse, was in keeping with the exact description provided to the police by Miss Ritchie. Miss Burton never explained the contents of her purse but indicated that the funds were a residue of a withdrawal through the ATM, while the other amount was separated for bus fare purposes.

The police, after taking statements from both parties, intended to arrest Miss Burton on criminal charges. However this was thwarted by Miss Ritchie's intervention. She advised that in an effort to avoid embarrassment on the School, if her funds were returned, she would opt for the School's disciplinary process to handle the issue.

On the other hand, we found that the evidence provided by the aggrieved party and her representative, was disjointed and that when Miss Burton herself gave evidence, her memory lapses were selective. She was able to recall specific minute details conveniently to support her views, but unable to when it would reflect negatively.

Despite Miss Burton's claim that she sat in the company of her ancillary co-workers, one of whom had advised her of being accused of sitting at Miss. Ritchie's table and that she was the entertainer for the night, she at no time called any of them to support her claims put forward in defence of the allegations.

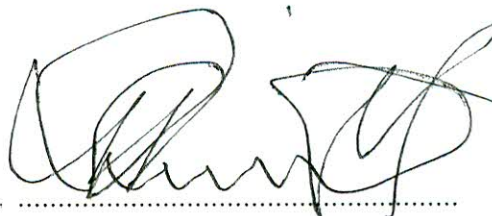
While we agree that no one saw Miss. Burton with the purse and as such the charge is circumstantial, we are of one view, that beyond all probability the evidence considered by the Board was not coincidental and as such the decision arrived at was the correct one.

The Tribunal therefore, after careful deliberation agreed that in all the circumstances of this case, the dismissal of Miss. Burton on grounds of gross misconduct was justifiable.

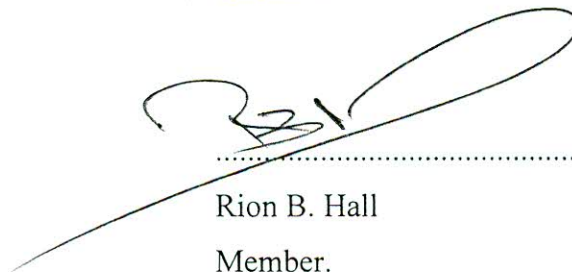
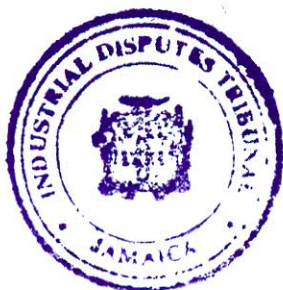
THE AWARD

The Tribunal awards therefore, that the termination of Miss. Claudette Burton's employment on the grounds of gross misconduct, was justifiable.

DATED THIS 28 DAY OF APRIL, 2015.



Norman Wright, QC.
Chairman.

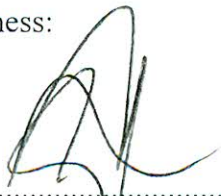


Rion B. Hall
Member.



D. Trevor McNish
Member.

Witness:



Gary Lediard
Secretary to the Division

