

Mr. Harrison



IDT 57/82

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

HOTEL FOUR SEASONS

- COMPANY

AND

THE NATIONAL WORKERS UNION

- UNION

Reference:

By letter dated July 21, 1982, the Honourable Minister of Labour in accordance with Section 11A(1)(a) of the Labour Relations and Industrial Disputes Act, 1975 referred to the Industrial Disputes Tribunal for settlement the dispute between the Company and the Union.

The Terms of Reference to the Tribunal were as follows -

"To determine and settle the dispute between Hotel Four Seasons on the one hand, and certain workers listed below, formerly employed by the Company and represented by the National Workers Union on the other hand, over their termination of employment:

Patsy Grant, Velma Henry, Colleen Lattibeaudiere, Gertilyn Morgan, Merdell Morgan, Delores Reid, Clement Robinson, Gloria Scott, Esmin Willox, Pansy Waugh, Ivanhoe Whyte, Cecil Anderson, Ronald Carty and Daphney Salmon."

The Division of the Tribunal selected in accordance with Section 8(2) of the Act comprised -

Mr. K.K. Walters	-	Chairman
Mr. M.B. Scott	-	Member - Sec. 8(2)(c)(ii)
Mr. J.E. McPherson	-	Member - Sec. 8(2)(c)(iii)

/The.....

The Company was represented by -

Mr. Edward Ashenheim - Legal
Mrs. H. Stoeckert - Manager

The Union was represented by -

Mr. L. Perry - Union Officer
Mr. H. Salmon - Legal Officer
Mr. E. Foote - Union Officer

Many of the persons named in the Terms of Reference attended the sittings.

Submissions and Sittings:

Briefs were submitted by the parties and submissions made during eighteen (18) sittings between the 14th September, 1982 and the 3rd February, 1983. Sittings scheduled for 28th October, 1982, and 10th November, 1982, were adjourned prematurely when the Tribunal ascertained that industrial action was continuing.

In summary, the Union contended that all the persons named in the Terms of Reference to the Tribunal were dismissed by the Hotel; that the dismissals were unjustified and that all these persons should be reinstated. The Union's witnesses testified that during the daytime on the 15th June, 1982, all these persons were told orally by Mrs. Helga Stoeckert, the Manager of the Hotel, that they were 'dismissed'.

In summary, the Company contended that none of the named persons was dismissed by the Hotel and the question of reinstatement does not arise; that employments of all these persons were terminated by their own act of default and that if any named person was dismissed either actively or constructively, his dismissal was justified.

The Company's principal witness, the said Mrs. Stoeckert, testified that the workers were instructed to resume or take up their duties at particular times during the 15th June, 1982 failing which they would be regarded as having abandoned their jobs.

Findings -

The Tribunal finds -

- a) that during the evening of 5th June, 1982, a plastic bag containing rice was seen in the handbag of Delores Reid, then an employee of,

/and.....

and Union Chief delegate at the Hotel.

Thereupon Mrs. H. Stoeckert, the Manager of the Hotel who made the discovery, suspended Miss Reid forthwith.

- b) that the suspension, notified by way of a letter to Miss Reid dated 5th June, 1982, was until the 15th June, 1982, when the matter would have been "taken up with the Union".

The Union through a negotiating officer, Mr. Elwin Foote, concurred with this arrangement.

- c) that Miss Reid returned to the Hotel on the morning of 15th June, 1982, and had a conversation with the said Mrs. Stoeckert at or about 8.00 A.M. Miss Reid did not take up duties;

- d) that following that conversation there was a stoppage of work by Patsy Grant, Velma Henry, Gertilyn Morgan, Merdell Morgan, Clement Robinson, Pansy Waugh, Ivanhoe Whyte, Cecil Anderson and Ronald Carty and these persons did not thereafter resume their duties during that day;

- e) that Esmin Willox, Daphney Salmon and Gloria Scott arrived on the Hotel premises at or after 9.00 A.M. on the 15th June, 1982, but did not take up their normal duties nor perform any duties at their work stations during that day;

- f) that the work stoppage and the failure to take up duties (see (d) and (e) above) which occurred because the Manager did not deal with Miss Reid's case immediately on the morning of 15th June, 1982, without the Union Officer being present, were not for a sustainable cause;

/g) that.....

- g) that the Union had advised Miss Reid on 15th June, 1982, that the workers who had ceased working on that day should go back to work;
- h) that on the 16th June, 1982, a number of the persons named at (c), (d) and (e) above took industrial action on the instruction and direction of the Union;
- i) that letters dated 17th June, 1982 and addressed to each of the persons at (c), (d) and (e) above were not delivered to the addressees, but the contents of the letters were communicated to all of them. Copies of the letters were sent to the Union;
- j) that the Ministry of Labour was notified of a dispute between the Hotel and the Union arising out of the suspension of Miss Reid and held conciliation meetings with the parties on the 24th and 28th June, 1982;
- k) that the sole issue raised by the Union during these conciliation meetings, was the suspension and dismissal of Miss Reid and no allegation of dismissal by the Hotel of the other workers was then made;
- l) that Colleen Lattibeaudiere who was on vacation leave on the 15th June, 1982, the day of the work stoppage was expected to resume duties on or about the 23rd June, 1982, but has not so far done so;
- m) that the individuals named at (d) and (e) above were notified orally by the said Mrs. Stoeckert to the effect that if they did not return to work or start working (as the case may be) on 15th June, 1982 they would be regarded as having abandoned their jobs;

/n) that.....

- n) that the letters dated 17th June, 1982 and addressed to the individuals named at (d) and (e) above state, inter alia -

"We confirm what we verbally told you on the fifteen of June that if you did not return to your work by 9.00 A.M. (later extended to 11.00 A.M.), you would be considered as having abandoned your job. You did not return to work as requested, and accordingly, you have abandoned your job and your employment with Hotel Four Seasons ceased at 11.00 A.M. on the Fifteen of June, 1982."

"We confirm what we verbally told you on the Fifteen of June when you came on your shift for 9.30 A.M. that if you did not start your work by 1.00 P.M. you would be considered as having abandoned your job. Since you did not report by 1.00 P.M. you are considered to have abandoned your job and your employment with Hotel Four Seasons ceased."

and were intended to convey the fact that the Hotel regarded the named individuals as having ceased to be hotel employees. These letters and their contents are accordingly deemed to constitute notice of dismissal even though there is no specific reference to dismissal therein;

- o) that the deemed dismissals were effective on 15th June, 1982, which the Hotel appeared to have been entitled to effect (see case of *Simmonds v Hoover Ltd.*, IAER (1977) at page 78 quoted below) -

"We are satisfied that at common law an employer is entitled to dismiss summarily an employee who refuses to do any of the work which he has engaged to do".

- p) that the Hotel has not lifted the suspension imposed on Delores Reid. The letter to her dated 17th June, 1982 - at which date industrial action sanctioned by the Union on the 16th June, 1982, was in progress - seeks to the holding of a joint meeting with her, the Union's representative and the Hotel;
- q) that the testimony of Colleen Lattibeaudiere shows that there was a settled, confirmed and continued intention on her part, by taking part in the strike sanctioned by the Union, not to do any of the work which she had been employed to do. Her failure to return to work at the expiration of her vacation leave amounted to a repudiation of her employment.

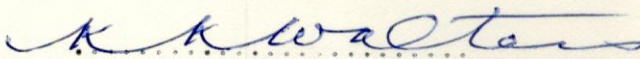
Award:

The Tribunal awards -

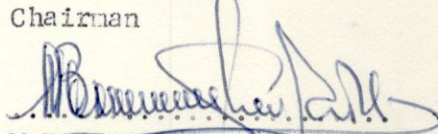
- i) that Patsy Grant, Velma Henry, Gertilyn Morgan, Merdell Morgan, Clement Robinson, Pansy Waugh, Ivanhoe Whyte, Cecil Anderson, Ronald Carty, Esmin Willox, Daphney Salmon and Gloria Scott were dismissed by the Hotel and their dismissals were justifiable;
- ii) that Colleen Lattibeaudiere abandoned her job;
- iii) that the services of Delores Reid have not been terminated.

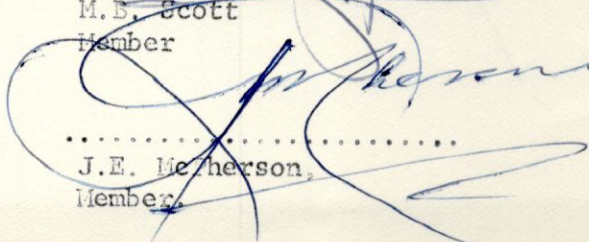
The Member of the Division appointed pursuant to Section 8(2)(c)(ii) of the Act is not in agreement with the finding at (p) above and the award at paragraph (iii) above.

DATED this 28th day of March, 1983.

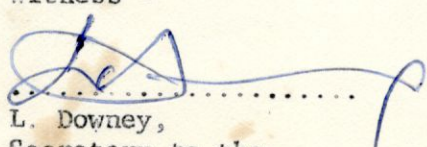


K.K. Walters,
Chairman


M.B. Scott
Member


J.E. McPherson,
Member

Witness -


L. Downey,
Secretary to the
Division of the Tribunal.