



TRINIDAD AND TOBAGO
TRADE DISPUTE NO. 277 OF 2008

IN THE INDUSTRIAL COURT

Between

NATIONAL WORKERS' UNION -Party No.1

And

**LANGSTON ROACH INDUSTRIES
LIMITED -Party No.2**

CORAM:

His Honour Mr. R. Lutchmedial	-Chairman
His Honour Mr. A. Aberdeen	-Member
Her Honour Ms. B. Mahabir	-Member

APPEARANCES:

Mr. D. Smith)
General Secretary)-for Party No. 1
Mr. L. Murray)
Senior Industrial Relations Consultant)-for Party No. 2

Dated: 14th February, 2012

JUDGMENT

Delivered by His Honour Mr. Albert Aberdeen

1. This trade dispute concerns a claim by the National Worker's Union hereafter called "***The Union***"), that Langston Roach Industries Limited (hereafter called "***the Company***"), verbally dismissed Mr. Keen Stewart, (herein after called "***the worker***"), on the 9th of January 2008, in circumstances that were harsh and oppressive and not consistent with good industrial relations practice.

2. Pursuant to orders of the Court, both parties submitted evidence and arguments in writing along with statements of the witnesses upon whom they intended to rely at the hearing of the trade dispute.

THE COMPANY'S CASE

3. In its written evidence and arguments, the Company claims inter alia that:-

"On the afternoon of Wednesday 9th January 2009, the worker along with several other employees, were engaged in offloading two (2) containers under the supervision of a customs officer at 4:00pm on the said January 9th 2009. The worker who was then the most senior of employees left the work area and the compound without reporting to his Supervisor and Manager. As a result of the worker's actions and perhaps because of his seniority, the other workers who were working with him also packed up and left the compound..... The worker reported for work on the morning of January 10th 2009 and he was questioned about the incident as January 9th 2009 and informed of the resulting circumstances which caused additional cost and embarrassment to the Company. The worker failed to give a satisfactory response and was subsequently sent home.

Two (2) weeks later the Company received a call from the Ministry of Labour on behalf of the worker and discussions were held between both parties and it was agreed that the worker could return to work. The worker failed to accept the invitation to return to work.

The Company contends that it was justified sending home the worker who had abandoned his duties.

The Company further contends that as a result of the actions of the worker additional cost and inconveniences were incurred.

That the worker was given the opportunity to advance reason(s) for his actions but failed to do so.

That notwithstanding its action on January 10th 2009, its doors were left open to deal with the issue.

That it acted in good faith by having dialogue with the Ministry of labour pursuant to the grievance

That the worker was given the opportunity to return to work but refused to do so.

That the worker by his actions refused the employment."

The Company requests that the Court dismiss the Union's claims and award costs.

THE UNION'S CASE

4. According to the Union's written evidence and arguments,

".....the worker commenced employment with the Company on 19th November, 2004 and at the time of his dismissal was in receipt of a wage of \$15.00 per hour.

....The normal hours of employment for the worker were 7.00 am to 3:45 pm.

.....On 8th January 2008 the machine the worker was using broke down at approximately 3:15 pm and following normal practice..... the worker found alternative work to do and assisted in unloading a container.

.....At no time had he been asked to do this by his supervisor and neither had he been asked to work overtime.

.....At 3:45 pm the worker, having completed his shift, left work and went home.

.....On the 9th January 2008 the worker reported for work as normal and clocked in.

.....At 7:00 am he was called into the office by Ms. Phillip, the Manager, and verbally dismissed. The reason given was that he should have stayed to assist in unloading the container until it was finished”.

The Union argued that the Company:-

**“.....had no reason to dismiss the worker;
.....did not undertake an investigation which should have elicited the correct facts surrounding the events the previous day, and
.....did not follow any recognisable or acceptable disciplinary procedure.”**

The Union further argued that “in terminating the employment of the worker in the manner that they did, the Company acted in a way that was harsh and oppressive and not consistent with good industrial relations practice.”

The union is seeking compensation as the remedy for the worker's dismissal.

THE EVIDENCE, OBSERVATIONS AND FINDINGS

5. In support of its case the union called the worker as its only witness. For its part the Company called as its only witness,

Mr. Roger Roach, the Chief Executive Officer of the Company.

THE WORKER'S EVIDENCE

5(1) The worker's evidence was clear and fully supported the union's case. Throughout his testimony he consistently maintained that:

- (a) He had come to work on the 8th January 2008 at 7.00 am and operated the machine to which he was assigned until about 3.15 pm, when the machine broke down.
- (b) Instead of remaining idle, he on his own decided to go and assist some other workers to off load a container of goods, until his time to leave work at the end of his shift which would have been at 3.45 pm.
- (c) He was not asked nor was he assigned to do so by any supervisor or anyone at all.
- (d) When the time came for his shift to end i.e 3.45pm, he clocked out his time card and left for home as it was customary to do.
- (e) There was no supervisor present at the container nor did anyone request him to stay beyond his normal finishing time to help to completely unstuff the container.
- (f) When he returned to work at 7.00 am on the following day the 9th January 2008, he was called to the office of the Manager Ms. J. Phillip, in the presence of two other workers, whom he had assisted to unstuff the container the previous day.
- (g) Ms. Phillip told him that the boss did not want him working for the Company any longer, because he did not stay to and finish off load the container.

- (h) She did not ask him for any explanation as to what had happened the previous day, nor did she give him anything in writing. He left the office and went immediately to the Ministry of Labour, where he met and explained to an official about his dismissal and the circumstances surrounding it.
- (i) Sometime on or about the 16th January 2008, he received a telephone call from the Manager Ms. Phillip, who invited him to come in for a meeting. She told him that the boss had made a mistake when he dismissed him because "**he was vex at the point in time**", and she invited him to come back for his job.
- (j) He told the Manager the he was not coming back out because he felt he would be victimised by the boss.

The worker remained steadfast and unswerving throughout his testimony. He consistently maintained his version of the events notwithstanding the rigorous and extensive cross examination by the representative of the Company.

THE EVIDENCE OF THE CHIEF EXECUTIVE OFFICER

5(2) On the other hand the evidence of the Company's witness Mr. Roger Roach the Chief Executive Officer, was not very supportive of the Company's case and was in our view of little or no value in refuting or contradicting the worker's version of the events which occurred on the 8th January 2008. Mr. Roach admitted that;

- (a) He did not see the worker on the 8th of January 2008, nor could he say for a fact whether the worker was assigned to unstuff the container after his machine had broken down.

- (b) He was not present at the site of the container when the worker left after his shift ended at 3.45 pm, and he could not say who had told him that the worker had left before the container had been completely unstuffed.
- (c) He did not give any instructions that the worker be dismissed or disciplined in anyway.
- (d) He was not present on the 9th January 2008, when Ms. Phillip the Manager, spoke to the worker, and he did not know what she had told the worker regarding his continued employment at the Company.
- (e) He presumed that it was his father Mr. Langston Roach (the Director) who had given instructions for the worker to be sent home, since Ms. Phillip never held any discussions with him before or after she had sent the worker home. To date he still did not know what Ms. Phillip told the worker on the 9th January 2008 when she sent him home.

FINDINGS

6(1) We observe that the Company did not call the Manager Ms. Phillip as a witness and relied solely on Mr. Roger Roach for its evidence in support of its case. We find;

- (a) That the company has failed to substantiate its claims that the worker had on the 8th January 2008, abandoned his duties or left the work area and the compound without reporting to his Supervisor or Manager. Indeed the company has not shown that the worker had committed any breach whatsoever or that he was guilty of any conduct which could justify

any disciplinary actions of any kind being taken against him.

(b) We find on the other hand, that the testimony of the worker was honest and forthright. His actions on the 8th of January 2008 were those of an industrious, dedicated and productive worker, interested in giving a full day's work for which he should have been commended instead of being condemned.

(c) We find from the evidence before us that the Company carried out no investigations into the events which took place on the 8th January 2008, and never inquired from the worker as to what was his version of those events. The worker left work at the end of his shift at 3.45 pm on the 8th January and was dismissed, at about 7.00 am the following morning, by the Company's Manager Ms. Phillip, who told him that the boss did not want him working there anymore. There was no charge or trial nor chance given to the worker to be heard in his own defence before the decision to dismiss him was made and executed.

6(2) As a consequence, we hold that the worker was dismissed by the Company in circumstances that were particularly harsh and oppressive and egregiously contrary to the principles of good industrial relations practice.

It is against this background that we consider that the worker's unwillingness to accept the Company's subsequent offer of reemployment, for the reason that he was fearful of future victimisation, to be not without justification.

COURT ORDER

7. In all the circumstances we are of the view that the justice of the case will best be served by an award of damages to the worker. Accordingly, pursuant to the provisions of section 10.(4) and (5) of the Industrial Relations Act, chapter 88:01, we order that the Company pay to the worker Keen Stewart, the sum of thirty two thousand dollars (\$32,000.00) on or before March 1st 2012.

**Mr. R. Lutchmedial
Chairman**

**Mr. A. Aberdeen
Member**

**Ms. B. Mahabir
Member**