



**TRINIDAD AND TOBAGO**  
**Trade Dispute No. 278 of 2008**

**IN THE INDUSTRIAL COURT**

**BETWEEN**

**NATIONAL WORKERS UNION - PARTY NO. 1**

**AND**

**DAISY'S EXCLUSIVE - PARTY NO. 2**

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**CORAM:**

His Honour Mr. Herbert Soverall	- Chairman
His Honour Mr. Gregory Rousseau	- Member
His Honour Mr. Robert Linton	- Member

**APPEARANCES:**

Mr. Dave Smith )  
General Secretary ) - For Party No. 1

Mr. Courtney Mc. Nish )  
Industrial Relations Consultant )  
Ms. Rayna Kowlessner )  
Attorney-at-Law ) - For Party No. 2

**DATED: July 25, 2011**

**JUDGMENT**

**Delivered by His Honour Mr. Robert Linton**

In this dispute the National Workers Union (*"the Union"*) alleged that Suzann Mitchell (*"the Worker"*) was terminated by Daisy's Exclusive (*"the Employer"*) without a charge being laid against her or any hearing of any charge and regarded such action to be contrary to the principles of good Industrial Relations practice. The Employer denied the allegations and submitted that the worker refused to obey a legitimate instruction, to be transferred to its Front Store and further, she absented herself thereafter. In the circumstances, her summary termination was deemed justified.

The parties filed Evidence and Arguments and presented oral evidence. The Union called one witness, the worker and the Employer called three witnesses, Director, Mr. Robert Ramroop, Director, Ms. Tara Ramroop, and Administrative Assistant, Mr. Surendra Maharaj.

The Company's letter of dismissal addressed to the worker and signed by Mr. Robert Ramroop was included as part of the Union's evidence and identified as Appendix "B."

**"2007 October 23**

**Ms. Suzann Mitchell  
PRESENT**

**Dear Ms. Mitchell**

**We refer to the recent development as they relate to your performance as the Store Manager of our Back Store Branch. The most recent of which involved the complaints by an employee that you had physically struck him.**

**We have repeatedly indicated the need for you to improve your working relationship with the members of staff. As such, you were advised that we were prepared to offer you special training, guidance and coaching to assist you in improving your staff relations.**

Accordingly, the Company brought back a former very experienced employee to work alongside you. In this regard, you were also advised that with effect from 22<sup>nd</sup>. October 2007, you would report to the Front Store, Main Road, Chaguanas for a period of 1 month to allow the Management to offer closer guidance and training to you.

It was also confirmed that your status as the Back Store Manager, as well as your salary and other conditions of employment will remain unchanged during the period that you were assigned to the Front Store.

You have however adamantly refused to report to the Front Store as instructed in our meeting on 22<sup>nd</sup>. October 2007, and further defied instructions by reporting to the Back Store today 23<sup>rd</sup>. October 2007. You have openly accused the Management of victimizing you and members of your staff of conspiracy against you.

Your actions have led to the creation of an untenable situation resulting in a breakdown in relationship between you and Management, such that the Company has lost its confidence in you to carry out your duties. In this regard, we have no alternative but to formally terminate your services with immediate effect.

We have enclosed a cheque in the sum of \$2,800.00 representing balance salary payment for the month of October, as well as two weeks in lieu of notice.

We thank you for your service and wish you all the best in the future.

Yours respectfully  
Sgd. Robert Ramroop

Robert Ramroop”

The worker testified that she worked as a Manager at Daisy's Exclusive Limited (Back Store) from February 22, 2007 to her date of termination on October 23, 2007 receiving a monthly salary of twenty eight

hundred dollars (\$2800.00). According to the worker her appointment as Manager was orally confirmed on two different occasions by Director, Mr. Robert Ramroop, who told her that she performed well during the probationary period. Further, she made the point that she had received three commissions for good performance.

Shortly after her appointment as Manager of the Back Store at Daisy's Exclusive Limited, problems began with the staff. The problem occurred because the Directors had recruited her from outside, as against elevating an existing member of staff. Therefore the staff disregarded her instructions. The subsequent suspensions of Kim Rampersad and Carol Jackson occurred because they disregarded her instructions. The worker alleged that those suspensions were effected after consultation with the Director, Robert Ramroop. He advised her to send home Ms. Rampersad for the rest of the day and suspend her for three days, as she found to be eating amongst the bridal fabric. In the case of Carol Jackson, she embarrassed another employee in the presence of a customer and when spoken to about her conduct, responded quite disrespectfully and annoyingly. Mr. Ramroop was alleged to have recommended a similar course of action for her. The worker had also served Kim Rampersad with two warning notices and Carol Jackson with a termination letter. The worker was eventually told to rotate the staff and she did exactly that. In all cases she relied on the support of Mr. Ramroop to address any problem, which she encountered. In another case, she was accused of striking Mr. Nicholas Boodoo and following his report of the incident to Ms. Tara Ramroop, the worker was orally warned about striking employees, as the Employer did not support the "striking incident." The Directors mentioned the complaints of the other workers to her.

On the issue of reporting to work at the Front Store on October 16 and 17, 2007 the worker denied that she received any such request. According to her, she was asked to hand over her keys and swatch card

to Ms. June Dilchan and to report to the Front Store for a meeting at 8:00 a.m. with Ms. Tara Ramroop on October 22, 2007. In the past, she admitted attending meetings with the Directors, at the Front Store on Mondays but that ceased when Ms. June Dilchan resumed working at the Store. Therefore, the invitation to that meeting certainly came as a surprise.

On the morning of October 22, 2007, the worker reported to the Front Store, at 8.00 a.m. for the meeting as instructed but it never started until approximately 12.00 noon. In attendance were the Directors, Mr. Robert Ramroop, Ms. Tara Ramroop, Ms. Daisy Rampersad, Human Resource Consultant, Mr. Courtney Mc. Nish and the worker. The meeting was called to address a dispute over the suspension of Ms. Kim Rampersad, which the worker was told, was reported to either the Ministry of Labour or Small and Micro Enterprises Development or the Industrial Court. The worker claimed that she was asked by Ms. Tara Ramroop for a copy of the letter that was given to Ms. Rampersad, or to reproduce the letter but said that would not be practicable as Ms. Rampersad had signed and received her copy of the letter. During the said meeting, the worker was asked to step out of the meeting on two different occasions, to complete a sales transaction with a customer. When that session ended Mr. Mc. Nish left and the meeting involving the Company's Directors and herself continued. During that meeting, overtures were made to convince her to work at the Front Store for a period of two months. The worker also indicated that she was told that it was not necessary to rush to make a decision about coming to the Front Store. Thereafter, it was suggested that she should proceed on two weeks maternity leave and when she inquired about vacation leave, Ms. Daisy Rampersad said **"is either you want to work or to make child."** The meeting ended, with the worker being told to think about coming to work at the Front Store. The worker insisted that she was never clearly instructed by the Company to come to

work at the Front Store but rather that she was told to think about coming to work at the Front Store. Mr. Mc. Nish gave the worker two weeks to decide about coming to work at the Front Store.

On October 23, 2007 the worker reported for work at the Back Store but was prevented from entering by Ms. Ramroop, who accosted her, inquiring "where the hell you think you are going...You are working for me not for Mr. Mc. Nish and that I don't care what the hell you do... I could go by the road for all she cared but you were not coming into my store." Ms. Ramroop then instructed her to wait at the side and a transfer letter would come. Subsequently, the worker explained that Mr. Mc. Nish called and told her that he was requested to write a letter to her but it never came and at 1.45 p.m. she left the area of the Back Store to meet her mother at Pennywise Store, Chaguanas. They then taxied to the Ministry of Labour and Small and Micro Enterprises Development, in Port of Spain, where she discussed the matter with a Labour Relations Officer.

Whilst at the Ministry, she received a phone call from Mr. Ramroop, who told her that he had a letter and a cheque for her, which must be collected before 5.00p.m. Sometime after 3:00 p.m. Surendra Maharaj (Indar), the Company's Secretary called again to reminded her to collect the letter and the cheque before 5.00p.m.

She denied that she told Indar that she was not coming to collect the letter and to tell Tara to do what she wanted, she claimed not to be abusive to Indar. Instead she told Indar that she was at the Ministry of Labour, In Port of Spain and would contact him when she arrived in Chaguanas. On reaching Chaguanas at approximately 5:00 p.m., she contacted Indar who took her upstairs, where she read the letter, which stated that she struck another employee and the Management and the workers had lost confidence in her. There was also a cheque, which was prepared for her in the amount of twenty eight hundred dollars (\$2800.00) as a "final settlement." The worker signed the letter but did not take the

cheque. The letter, which she subsequently received from the Company on October 26, 2007 through the mail was different to that which she had initially seen and signed, as the worker's name was allegedly removed from the correspondence.

### **THE EMPLOYER'S CASE**

Ms. Ramroop was the Employer's first witness. She was also its principal witness since she played the most active role in this matter.

Ms. Ramroop confirmed that the worker started working in the back store in February 2007 and successfully completed the ninety day period of probation in May 2007. There was little doubt that the worker knew about Fabric but she lacked the cultural business experience and that placed her at a serious disadvantage.

Mr. R. Ramroop testified that initially he had reservations about the worker's cultural inexperience, since she worked at a vender's mall, on the streets of Chaguanas and did not have any knowledge about working with staff.

The worker had problems with the employees and vice versa. He repeated that it was quite normal for the worker and the employees to be engage in heated arguments, with some saying that they could not work with her and others were begging to be moved. The worker in turn complained that "she could not handle them." He even witnessed the worker being abusive to members of staff and had to speak with her about her conduct. All twelve employees under her supervision complained about her, causing Ms. Ramroop to hold discussions with her. As a consequence, workers were moved to the other branch between June and August, with a view to solving the problem but that failed to resolve the situation. According to Mr. Ramroop such movements occurred only when something went wrong.

Surendra Maharaj (Indar), the Employer's Administrative Assistant recalled that anytime he visited the Back Store, the staff would complain to him about the worker's abusive behaviour, she was strict and made up her own rules, which differed from those of the Company's Management.

Ms. Ramroop also recalled receiving a report about the worker striking Mr. V. Boodoo, in September 2007. When that report was drawn to the worker's attention, at first she denied any knowledge about the incident but later confirmed its occurrence, indicating that she merely flicked his ear and said it would not happen again. Ms. Ramroop warned her that such conduct was unacceptable and should not be repeated. It was around that time that the decision was made to approach Ms. Dilchan. Ms. Dilchan was a retired Manager and was asked to return to the store for a few months to assist the worker. Ms. Dilchan was required to train the worker as she had twenty years working experience with the Employer and knew the business; she understood the needs of the Employer.

Mr. V. Boodoo, was the brother-in-law of Indar (the Company's Secretary), who confirmed that the incident did occur between his brother in law and the worker, Indar said that he had suggested that the matter should be reported to the Directors, since when he had spoken to the worker she had completely denied any knowledge about it. .

Ms. Ramroop had spoken to Ms. Dilchan in September and she immediately agreed to return and provide the help the Company had been looking for. At the end of September Ms. Ramroop firstly told the worker of Ms. Dilchan's return and eventually the staff was also told of Ms. Dilchan's return. In this connection it was related that the worker would usually call the Employer around six/seven times a day with problems and so, it was felt that with the presence of Ms. Dilchan they would work side by side and Ms. Dilchan could help where and when it was needed.



Shortly after working with Ms. Dilchan, the worker was instructed to report to the Front Store, where it was expected that she would work with the Directors, gathering useful experience before returning to the Back Store with that experience, which was earlier acquired in time for the commencement of the busy Christmas season. However, this was not to be as the worker reported to the Back Store on October 23, 2007 and insisted that she should be given a letter of transfer, but this was highly unusual as the Employer was accustomed to transferring staff orally.

Ms. Ramroop clarified this position in her witness statement on October 15, 2007 she "eventually told her (the worker) "to think about it" meaning to think "about all the good things that could come from moving to the front" and not "about the movement to the front store. She emphasized that she made that point quite clear to the worker during their discussion. At the manager's meeting on Monday October 22, 2007, she, Ms. Ramroop, asked the worker for the reason why she did report to the front store and was told that the worker needed to complete an order at the back store. Ms. Ramroop told her to finish the order and come to work at the Front Store on Tuesday April 23, 2007 she never told the worker to take two weeks to consider the move.

On the morning of October 23, 2007 Ms. Ramroop reported to the Front Store expecting to find the worker at work but she was disappointed, as the worker did not report as was expected. Ms. Ramroop claimed that she then visited the Back Store and found the worker seated on the Planter Box outside the Back Store speaking on her Mobile Phone at 9.00 a.m. Ms. Ramroop enquired why did she not report to the Front Store as was arranged and the worker bluntly responded in a loud tone saying "ah not going in no Front Store to work." The worker's response was an absolute refusal to work at the Front Store, The response was so loud that the employees of the store and passerby were attracted to the commotion. Thereafter, Ms. Ramroop left and went into the store, greeted the other

employees and left again returning to the Front Store, not before telling the worker, when she was ready she should report to the Front Store. Sometime later she was told that the worker had left and she thought that the worker was coming to the Front Store but when she was not seen attempts were made to contact her on her mobile phone but the worker refused to answer. Ms. Ramroop then instructed Indar to call her, he tried but again the worker refused to answer.

Ms. Ramroop denied promising to give the worker any letter of transfer, an issue which was never raised for discussion; in any event, the Company never provided letters of transfer to its staff, they were all told by word of mouth and complied. Mr. Ramroop corroborated that the worker was never written too about the transfer since it was not the Company's policy.

According to the Employer, employees were accustomed to being transferred by word of mouth, a fact about which the worker admitted to knowing. Thereupon, the Employer made reference to her letter of employment, which stated that she might be required to manage all employees at any branch to which she was posted. The worker never came to the Front Store or reported to work after that development. Ms. Ramroop testified that the matter was discussed with her brother and a decision to immediately terminate the services of the worker was taken. The decision to dismiss was influenced by the disregard for instructions that was given on October 22, as well. Also her misconduct on October 23, 2007 outside the Back Store, where she had reported for duty. The worker was dismissed by a letter dated October 23, signed by Mr. Ramroop.

Ms. Ramroop confirmed that she was dismissed some time before 12.00 noon on October 23, 2007. The letter of dismissal was drafted by the Human Resource Consultant, Mr. Mc. Nish and amended by Mr. Ramroop, who eventually got his Administrative Assistant, Mr. Maharaj to

forward the letter via registered mail to the worker's home. The letter of dismissal said the company had lost confidence in the worker's ability to properly execute her functions.

The worker, Ms. Ramroop continued, may have reported for work on Wednesday 24<sup>th</sup> October or Thursday 25<sup>th</sup> October but she did not do so. She could not have known at the time that she was dismissed. She subsequently received the letter by mail some days later and Indar did not tell her of the contents of the letter when he had spoken with her on the phone.

Before deciding to dismiss her, three attempts were made to contact her on her mobile phone, to determine her intentions but all such efforts were made without any success. If only she had answered according to Ms. Ramroop, she would not have been dismissed, as the Company would have accepted her reporting for work on the next day.

Ms. Ramroop recalled that on October 24, 2007 the worker's mother told her that the worker was not coming back to work. However, the mother was told that the worker's services had been terminated.

In Ms. Ramroop's review it had passed the stage of giving an opportunity to be heard because she had gone to the Back Store to try to persuade the worker to come to the Front Store but the worker bluntly refused. Consequently, the relationship had broken-down.

On the instruction of Mr. R. Ramroop, at approximately 1.00 p.m. on October 23, 2007 Mr. Surendra Maharaj (Indar) was instructed to try to contact the worker and tell her that the Employer had a letter for her to collect and she was required to sign for it. After trying a few times, he contacted her between 2:30 p.m. to 3:00 p.m. He told her to come and collect the letter and she was a bit agitated. And with arrogance in her voice she indicated that she was not coming for any letter and that the Employer could do what he wanted with the letter. He thereafter waited for

the return of Mr. R. Ramroop who had stepped out for a few minutes. On Mr. Ramroop's return, he mentioned to him that the worker was not coming for the letter. Mr. Ramroop took it and went into the office for a while. About fifteen minutes later at approximately 3:30 p.m. Mr. R. Ramroop came back out and told him to mail the letter by registered post to the worker. The Post Office was located between ten/fifteen minutes away. He mailed the letter as instructed and returned to the store after 4:00 p.m. He gave the receipt from the Post Office to Mr. Ramroop. Thereafter, between 4.30 p.m. and 5.00 p.m. Mr. Ramroop, the Security Officer and Mr. Maharaj closed up and left the store.

The worker did not collect the letter on October 23, 2008. Mr. Maharaj did not see the worker on the afternoon of October 23, 2008 and neither did he have a conversation with the worker that afternoon.

Mr. Ramroop spoke about an incident that occurred on August 21, 2007 when the worker suspended two employees without any consultation with the Store's Directors, ignoring the Company's policy. Further, on October 22, 2007 Directors' Daisy Rampersad, Tara Ramroop and Robert Ramroop met with worker to address her failure to report for work at Front Store and instructed her to report on October 23, 2007. Management then announced to the other employees who attended the meeting that effective October 23, 2007 the worker would be reporting to work at the Front Store. At that stage the worker then stormed out of the meeting without explanation and management ignored this misconduct.

Ms. Ramroop indicated that the Front Store opened at 8.30 a.m. and closed between 4.30 a.m. and 5.00 p.m. depending on the time of the year and the extent of business activity at that time. On October 23, 2007 the store was closed at 4.30 p.m. and Mr. Ramroop left with Mr. Maharaj and the Security Guard at 5.00 p.m. Up to the time of leaving the store the worker had not visited. Moreover, whenever it was closing time at the

Front Store and she was unavailable her brother Bob would close the store with the assistance of the other employees.

The worker's behavior was described as job abandonment following her failure to report to the Front Store and her subsequent failure to contact the store. The worker was last in contact with the store on October 23, 2007. Therefore, the Company felt that the worker had abandoned her job sometime before 12.00 noon on October 23, 2007.

Mr. Ramroop admitted that there was no written disciplinary policy at the Company. He also confirmed that the store's Administrative Assistant tried relentlessly to contact the worker but was unsuccessful until he used his mobile phone and she responded.

### **ANALYSIS**

In any dispute, there are two aspects namely, the substantive, that is, that which the Minister of Labour certified as the nature and scope on the unresolved certificate and the procedural, which refers to the disciplinary process instituted by the Employer in respect of the dispute. In our deliberation into this matter, we looked at both aspects ascribing the appropriate weight thereto.

For the court to rule in its favour, the Union had to prove the substantive aspect and/or disprove the procedural aspect during the presentation of its case while on the other hand the Employer would need to disprove the substantive aspect and/or to prove its procedural aspect. Should either party fail in this regard, the court could rule against it. It was in that context that we considered this matter.

Having said that, however, there might be exceptional circumstances in which the substantive aspect could outweigh the procedural aspect, or vice versa for example, in the case of a justifiable summary dismissal.

It is axiomatic that on October 23, 2007 the worker reported for work at the Back Store and disregarded any persuasion to report to the Front Store. We heard evidence that she remain seated on the planter on the pavement and eventually left the precincts of the Back Store, without advising anyone of her intended destination. This action combined with the workers refusal to receive phone calls from the store, led to the Employer's use of registered mail to contact her. On October 24, 2007, the worker's mother spoke with the Employer but there was no word from the worker. The Union questioned the conduct of the Employer stating that it had acted in breach of the principles and practice of good Industrial relations, since the worker was terminated without being given any reason or afforded an opportunity to be heard in her own defense.

Moreover, we noted the following facts with respect to the substantive side of the dispute.

- Her appointment was confirmed orally that her performance was okay. She was not given a letter of confirmation.
- No rotation policy existed but workers were moved depending on operational needs. The Union did not tender any evidence to support the existence of a rotation policy.
- The Employer rotated a worker named Annette because she and the worker "kept falling out".
- Employees normally stayed at their assigned store.
- Providing that the problem stemmed from her interaction with staff in the Back Store, could she be sent back there.
- She had suspended Kim Rampersad and Carol Jackson on the alleged instruction of Robert Ramroop.

- The worker did not write in her black book that she had spoken to Mr. Ramroop and he gave her instructions to suspend those workers.
- She gave up the keys and swatch card to June Dilchan on October 20, 2007 as instructed by Ms. Tara Ramroop.
- The worker indicated that she was not going to the front store to work.
- June and Avinash opened on April 23, 2007 and not Ms. Tara Ramroop.
- The worker sat outside of the office from 8:00 a.m. to 1:45 p.m. in a pregnant state and quietly.
- If she was told to await a transfer letter then she could have reported to the front store and await the letter, instead of remaining at the back or leaving the premises.
- She told Indar she was not collecting the letter and was abusive to him.
- She never went back to the store as requested by Bob and Indar.
- It is the policy of the Employer that one of the Directors must be in the store when it is closing.
- The Employer had posted the letter and there was no way the worker could have read it at the Office as she claimed.
- The worker claimed that the dismissal letter presented by the Employer was different from the one that she had allegedly read but when compared with that appended to the Union's Evidence and Arguments, the Union agreed that there was really no difference between the letters and said it was the same letter.

- In her black book, the worker referred to another meeting on August 27, 2007, contrary to her testimony that there was only one meeting on October 22, 2007.

In light of Ms. Ramroop's testimony that "she may have been back on the job and all forgiven, if only we had made contact with her," the Court felt that the letter of dismissal should have been one inviting her to attend a hearing to explain her conduct. The worker may have **complied and complained** and followed the matter through to the stage of a trade dispute.

It is noteworthy that Ms. Ramroop had testified that she instructed the worker on October 22, 2007 to report to the front office on October 23, 2007 and the worker refused. Subsequent unsuccessful attempts were made to contact her and eventually the decision to dismiss was made on October 23, 2007.

These activities took place within a period of two days, which was too short a time in which to determine her contract, given the nature and scope of the allegation. That allegation was not sufficiently serious to warrant a dismissal without a more fervent attempt being made to contact the worker. This position is more glaring when consideration is given to Ms. Ramroop testimony that "if they had spoken to her on October 23, 2007 or if she had reported for work on October 24, 2007, she would have withdrawn the letter of dismissal."

In our view, this was not an exceptional case demanding summary dismissal and of relevance, the following dictum in **John v Rees (1969) 2, ALLER 274** is pertinent as far as this matter is concerned.

**"It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. "When something is**



**obvious,” they may say, “why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.” Those who take this view do not, I think, do themselves justice. As every body who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events.”**

Furthermore, this Court is of the view that in this dispute there are three items cited for determination, based on the letter of dismissal outlined earlier, namely

- (1) can the Company claim as reason for dismissal a matter of the worker striking another employee?
- (2) the issue of the loss of confidence in the worker by the Employer, and
- (3) whether or not the summary dismissal of the worker was proper?

The first two items are of a substantive nature and the last item is of a procedural nature.

- (1) The issue of the worker striking another employee has absolutely no place in the letter of dismissal and should be disregarded, in as much as Ms. Tara Ramroop on the basis of her own testimony admitted to previously resolving the matter. In other words, the matter was previously raised, discussed and resolved as the worker eventually admitted to her involvement in the “tapping” incident, she

received a reprimand for her misconduct. The worker was told that Management could not support such a course of action. Mr. Surendra Maharaj, a witness for the Company confirmed this action. Therefore, this matter has no place in the letter of dismissal. It was therefore already dealt with; it was sub judice.

- (2) With respect to the issue of loss of confidence, in **Trade Dispute No. 2 of 2001 between Banking, Insurance and General Workers Union and Hindu Credit Union**, (delivered on July 31, 2001) the **Industrial Court** said "Loss of confidence" is not by itself, a sufficient reason for a worker's dismissal. An employer may lose confidence in a worker for a variety of reasons. There must be a valid reason or reasons for losing confidence in a worker and valid reasons must be supported by credible evidence.

The letter of dismissal spoke about the employer losing confidence in the worker and that was because of the events, which occurred on October 23, 2007. It is the Court's view that the loss of confidence should have been better connected in the letter. However we are reminded of the provisions of **Convention 158 of 1982 of the International Labour Organisation** which states inter alia that:-

**"The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on operational requirements of the undertaking, establishment or service."**

The Employer had failed to present or submit any evidence in support of its contention on "loss of confidence. There was as a

consequence, nothing for us to consider in that respect and in our opinion, it was adjudged to be a non issue.

- (3) The third item is whether or not the summary dismissal of the worker was appropriately used by Management in this instant matter. The Court admits that the worker may have been guilty of serious acts of misconduct on October 22 and 23, 2007 respectively. But the lack of action by the Employer on the first occasion, that is, on October 22, 2007 may have contributed to a false sense of security, which apparently empowered the worker's action on the second occasion. To this end, the worker's request for a letter of transfer was unusual, especially as the Company did not have a history of transferring staff, other than by word of mouth. There is no doubt that the Company may have acted with greater promptitude initially, avoiding any recurrence of the problem but certainly, its letter of dismissal in response to the worker's misconduct on October 23, 2007 was faulty and the Employer may have explored the jurisprudence of Industrial Court, taking guidance from the several examples available to it. It was the right of the Employer to act responsible and reasonably in arriving at its decision, not only for the benefit of this worker but as an example to all of its other employees. The worker should have been invited to attend a meeting, she may have attended or ignored the invitation but no doubt if she failed to attend, it would have been done at her peril. Therefore, we do not agree with the inference from the Human Resource Consultant that this was one occasion when the Employer needed to act without the benefit of the worker's input, far from it, the difficulties experience in contacting the worker was frustrating but not sufficiently so, to deny the worker an opportunity to be heard.

When this situation is juxtapose with the Employer's admission that there was no written disciplinary procedure it begs the question of the Employer's approach in the matter.

**H.H. Mr. Addison Khan, in the matter between Banking Insurance and General Workers Union and Hindu Credit Union (date) commenting on the opportunity to be heard said "I find as a fact that, before dismissing the worker, the Board, contrary to the principles and practice of good industrial relations, did not inform the worker of the alleged reason or reasons for her dismissal and did not give her an opportunity to be heard."** The Board did not:-

- conduct any investigation into the allegations made against the worker
- provide any explanation of the allegation to the worker.
- put any allegation of misconduct to the worker.
- accord the worker an opportunity to defend herself against the allegations.

In the dispute before the Court, the worker was dismissed on October 23, 2007 without any attempt being made by the employer to hear the worker's comments about what had transpired. At the time of the termination, the worker had left the precincts of the Back Store and no one was aware of the reason for her departure. The dismissal of the worker had taken place the very day she had failed to report for duties at the Front Store. No one knew of the precise reason for her absence or her failure to report to the Front Store. The worker by her action may have contributed to her predicament.

The Court, nevertheless, expected much more from the Company, especially with the assistance of its Human Resource Consultant. When

the first problem developed on October 22, 2007 the obviously annoyed worker should have been disciplined, if she could not provide an adequate reason for walking out of the management meeting. In all the circumstances, the decision to summarily dismiss the worker, notwithstanding her display of poor judgment was harsh, oppressive and contrary to the principles and practice of good industrial relations

In the matter of **Trade Dispute No. 130 of 1994 between the Association of Technical, Administrative and Supervisory Staff and Caroni (1975) Limited, (delivered on July 29, 1996)** the court said in part:-

**“it was an elementary rule of good industrial relations practice that, before dismissing an employee from his employment, an employer must give that employee an opportunity to be heard on all allegations made against him.”**

Therefore, the Court found on the evidence that the Company had failed to give the worker an opportunity to be heard before dismissing him. In the circumstances, the Court held that the dismissal was harsh and oppressive and not in accordance with the principles of good industrial relations practice.

In the matter of **Trade Dispute No. 106 of 1997 between Lever Brothers (West Indies) Limited and the Oil Fields Workers’ Trade Union, (delivered on October 19, 1978)** by the then Vice President H.H. Mr. C. E. Bramble, said:-

**“We hold that Richards ought to have been given an opportunity to state his case before the officer who took disciplinary action. Since this was not done we find that the dismissal was not in keeping with the principles of good industrial relations practice.”**

In Trade Dispute No. 98 of 1977 between Barclays Bank of Trinidad and Tobago and Barclays Employees Union, (delivered on January 12, 1978) the Court again stated that:-

**“Corbie wrote an abusive and insulting letter to his Manager. This was such as to invite disciplinary action. Within a few days, the bank dismissed him. He had about twelve years service with a clean record. The Management Section dealing with discipline never interviewed him. The Managing Director, who alone could dismiss an employee, did not interview him and so he had no opportunity to put his case or to apologies before dismissal. The apology sent was late because of the haste with which the bank acted. The bank has not established that, had the proper procedure been followed, the result would have been the same.**

**In the circumstances, we hold that the dismissal was not in accordance with the principles of good industrial relations practice.”**

In the premises, it is clear that greater weight has to be placed on the procedural flaws than on the substantive matter having regard to the manner by which the Employer handled this matter.

Ms. Ramroop had also testified that she knew that the worker was pregnant and that with the Employer's permission she visited the clinic on Mondays, the same day as the managers' meeting. Having regard to that knowledge of the worker's condition, the Employer should have adopted a more humane and sympathetic approach in its dealings with the worker and provide the worker with more time to collect and maybe compose herself instead of hastily terminating her services.

**ORDER**

Accordingly, given the reasons outlined above and pursuant to the provisions of Section 10(3) of the Industrial Relations Act, Chapter 88:01 we order the Employer, Daisy's Exclusive, to pay to the worker Suzann Mitchell damages in the amount of fifteen thousand (\$15,000.00) dollars on or before August 22, 2011.

Liberty to apply

**H.H. Mr. Herbert Soverall  
Chairman**

**H.H. Mr. Gregory Rousseau  
Member**

**H.H. Mr. Robert Linton  
Member**

