

**IN THE COURT OF APPEAL OF TURKS AND CAICOS**

**CIVIL APPEAL NO. 5 OF 2013**

**BETWEEN: LYNDEN HALL**

**APPELLANT**

**(T/A as Express Water Delivery)**

**and**

**RODIN ST. LOUIS**

**RESPONDENT**

Before:

The Honorable Mr. Justice Zacca, President

The Honorable Mr. Justice Mottley, Justice of Appeal

The Honorable Mr. Justice Forte, Justice of Appeal

Guy Chapman of Savory & Co. for the Appellant.

George Misick of Karam & Misick for the Respondent.

Heard on September 3, 2013

Delivered on: January 30, 2014.

**Mottley J.A,**

1. At the conclusion of the appeal the Court indicated that the appeal against the award of compensation was allowed. We ordered that the matter be returned to the Tribunal in order that the Tribunal may make a proper finding as to the compensation to be paid to the Respondent. At that time, we promised to put our reasons for doing into writing. These are those reasons.
2. In its decision dated 23 January 2013, the Tribunal stated that having “considered all the evidence and submissions made on behalf of the Applicant and the Respondent together with all surrounding circumstances”. It “concluded that the Respondent unfairly dismissed the Applicant without warning and without notice.”
3. This Court adopts the background to the matter as is set out in paras 11-15 in the Decision of the Tribunal. The Tribunal stated:

“[11] The Applicant, Rodin St. Louis, claims that he entered into employment as driver with the Respondent Lyden Hall/Express Water Company Ltd in September 2000 and continued in this capacity until February 21, 2010. The Respondent knew the Applicant for some nine years following introduction by a friend. He, the Respondent objected and informed the Tribunal that sometime with the nine year period of employment as a driver commenced after the Applicant had acquired a driver’s licence.

[12] There are conflicting evidences regarding the Applicant’s weekly wage which, the Applicant alleges was calculated at \$10.00 for each load of water, rather than the fixed amount of \$250.00 as the Respondent painstaking outlines. Two separate FCIB bank deposits to the Applicant’s Savings Account made on 6<sup>th</sup> March and 17<sup>th</sup> March 2009 indicates to the contrary.

[13] The Applicant claims that he had no Contract of Employment during his period of employment with the Respondent and that for some four years he paid

for his own Work Permit. The Applicant also alleges that the Respondent held his Passport for as long as he worked for the Respondent.

[14] Over the nine year period the Applicant both in his oral and written statements related that he was subjected to accusations of misuse as well as illegal use of the Respondent's vehicle. During the Applicant's meeting with the Respondent on February 21, 2010 the Applicant gave evidence that the Respondent told him: "You cost me too much money, you need to pay for the leak and thing and the transmission that was broken." The Applicant reminded the Respondent of his many calls to him reporting the noise in the transmission, however the Applicant related the Respondent as saying "if I don't want to pay, I don't have no job." The Applicant in retaliation gave evidence that he said: "No Boss, in 2003 I have a truck that fall; I spent more than \$3000.00 to fix it. I said, that's not going to happen this time. I not paying for anything." The Applicant said that following his statement the Respondent demanded all his keys and told the Applicant "not to put foot in his place in South Dock."

[15] The Applicant did not report to work after February 21, 2010 neither was there any form of communication between himself and the Respondent. The Respondent's telephone records (in evidence) for February 22, 2010 show a 03 second call to the Applicant's mobile phone.

Included in the Agreed Bundle before the Tribunal (Pages 12-17) are five documents which the Respondent claims he prepared failing his attempts to reach the Applicant. The three warning letters dated February 25, March 01, March 05, 2010 followed by a Termination Letter on March 10, 2010 then another entitled **Job Desertion** dated March 21, 2010, neither of which were ever received by the Applicant. During oral questioning by the Tribunal the Respondent acknowledged that he knew where the Applicant lived and that he had made attempts to visit him. However, there is no evidence to substantiate the Respondent's claim that he made efforts to reach the Applicant via third parties or contacting him at his residence."

4. On 19 February 2013, the Tribunal made the following award for compensation:

"[1] Based on the decision of the Tribunal of Unfair Dismissal of the Applicant from the Respondent's employ, the Applicant should be awarded compensation under Section 85(2) of the Employment Ordinance 2004 which states:

*"(2) If on a complaint under section 83, the tribunal hearing the complaint finds that the grounds of the complaint are well-founded and no order is made under section 86, the tribunal may make an award of compensation for unfair dismissal, calculated in accordance with sections 90 to 92, to be paid by the employer to the employee."*

The Labour Tribunal therefore awards compensation as follows:

[2] **Basic Award**

The Employment Ordinance 2004 Section 90(2) further states: "The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee had been continuously employed by starting at the end of the period and reckoning backwards the number of years of employment falling within that period, and allowing-

*Subsection (2)(b) "one week's basic wage for each such year of employment not falling within (a) in which the employee was not below the age of twenty-one;*

In this case, the Applicant was 27 years at the time of employment; hence he is entitled to one week's pay per year of employment:

Date of Birth:	August 26, 1973
Date employment commenced	September 2000
Date employment ended	March 21, 2010
Weekly Income	\$700.00
Total Period of employment	9 yrs and 6 mths

Basic Amount Awarded:

(1) (a)  $\$700.00 \times 52$  per year = \$36,400 divided by 12 = \$3,034.00 per month

(b) 9 years at one week per year calculated at \$700 x 9 = \$6300.00

(c) 6 month at \$700.00 divided by 2 = \$350.00

**Total \$6300.00 + \$350.00 = \$6650.00**

### [3] Vacation Pay

The Tribunal awards the Applicant vacation pay for unused vacation for a period 7 years as indicated in the Originating Application clause 12(4)

Weekly wages = \$700.00 x 2 wk pay x 7 years  
=  $\$700.00 \times 14 = \$9800.00$

### [4] Work Permit Fees

The Applicant gave evidence that he paid for his own work permit of four (4) years, which was disputed by the Respondent. The Tribunal accepted the evidence given by the Applicant that payments were made by the Applicant for his work permit fees.

Work Permit for 4 years at cost of \$1000.00 per year = \$4000.00

[5] **Outstanding Weekly pay**

The Tribunal awards the Applicant after considering the evidence given on behalf of both parties for outstanding pay for the Applicant's final week and three days of employment in the amount of **\$1,160.00.**"

"To this end [Notice Pay] the Tribunal finds the dismissal unfair after considering all the evidence and the surrounding circumstances.

The Tribunal awards two months to the Applicant:  $\$700.00 \times 8 \text{ weeks} = \$5,600.00$

[7] **Immediate Loss:** The Tribunal finds that due to the down turn in the Turks & Caicos Islands economy it was reasonable to accept that it was difficult to gain employment.

The Tribunal awards two months remuneration = \$5,600.00

[8] **Future loss:** The Tribunal took into consideration the local job market, the applicant's age and skills, and the likely duration of the job lost by unfair dismissal after being employed by the Respondent for nine (9) years and six (6) months.

The Tribunal awards one month remuneration = \$2,800.00

**Total Due to the Applicant:**

Basic Compensation:	\$6,650.00
Vacation Pay:	\$9,800.00
Reimbursement Work Permit	\$4,000.00
Outstanding Weekly pay:	\$1,160.00
Notice Pay:	\$5,600.00
Immediate Loss:	\$5,600.00
Future Loss:	\$2,800.00
<b>Total Amount:</b>	<b><u>\$35,610.00</u></b>

The sum of Thirty five thousand six hundred and ten dollars (\$35,610.00) be made payable to the Applicant."

5. In his evidence the Respondent stated that he was employed as a truck driver with the Appellant delivering water throughout Providenciales. In response to a question as to what was his salary, he said \$800.00 to \$900.00. He indicated that he was paid \$10.00 per load. He stated further that he “used to do 20, 15, 13 and 16.” He was shown a Paystub Detail which showed his salary for the period 2 March 2009 to 7 March 2009 as \$250.00. When asked by the President of the Tribunal whether his salary was \$250.00, he responded “I don’t know.” When his attorney-at-law sought clarification as to whether his salary was \$250.00, the Respondent replied that it was not correct. However, no further attempt was made by counsel to find out what his salary was.
6. The Appellant had previously stated that the Respondent had “worked for the same amount of hours” each week. He indicated that the Respondent worked for two hundred and fifty dollars less National Insurance each week. This was so whether he was paid in cash or by cheque.
7. In cross examination, it was suggested to the Appellant that the cheque of \$757.00 paid to the Respondent by the Appellant was not for incidentals as the Appellant alleged but was part of his salary. This suggestion was rejected by the Appellant.
8. The Tribunal had a numbers documents showing the N.I.B. contributions by the Respondent for the years 2009 and 2010. In addition, a document entitled Contribution Summary for Robin St. Louis showed the Respondent’s N.I.B. contributions for the period 2002 to February 2010. The Contribution Summary does not support the allegation of the Respondent that he worked for the Appellant from 2000. Nor does it

support his evidence that he worked for \$800.00 to \$900.00 per week. In fact, the documents from N.I.B. directly contradict the oral testimony of the Respondent.

9. It was submitted on behalf of the Appellant that there was not enough evidence before the Tribunal for it to hold that the Respondent's employment commenced on 1 September 2000. In such circumstances, it was argued, the Tribunal could not properly come to the conclusion that the period of employment was 9 years and 6 months. Consequently, there was no proper basis on which the Tribunal could base its award on the start date of employment.

10 In addition, counsel for the Appellant contended the N.I.B. Contribution Summary does not support a claim of full-time employment of the Respondent between September 2002 and March 2009. He further argued that the oral evidence supported some kind of intermittent employment but not unbroken continuous employment.

- 11 The Master Employment Contract showed that for the period commencing 2 March 2009, the Respondent's basic monthly salary was stated to be \$1000.00. The Paystub Detail for the period 2 March 2009 until 20 February showed that his weekly earning was \$250.00 per week.

- 12 In the Basic Amount Award it is stated:

1(a)  $\$700.00 \times 52 \text{ per year} = \$36,400$  divided by 12 =  $\$3,034.00$  per month

(b) 9 years at one week per year calculated at  $\$700 \times 9 = \$6300.00$

(c) 6 month at  $\$700.00$  divided by 2 =  $\$350.00$

Total  $\$6300.00 + \$350.00 = \$6650.00$

13 In respect of vacation pay the Tribunal award was made up as follows:

$$\text{Weekly wages} = \$700.00 \times 2 \text{ wk pay} \times 7 \text{ years} = \$700.00 \times 14 = \$9800.00$$

14 In respect of Notice Pay, the Tribunal award for two months was:

$$\$700.00 \times 8 \text{ weeks} = \$5600.00$$

15 Under the head of Immediate Loss, the Tribunal awarded two months remuneration  
\$5600.00

16 Under the head of Future Loss, the Tribunal having referred to the Respondent "being employed by the Respondent for nine (9) years and six (6) months" awarded the Respondent one month's remuneration of \$2800.00

17 An analysis of these awards shows that the Tribunal concluded that the Respondent's salary was \$700.00 per week. In reaching this conclusion it would appear that the Tribunal accepted the evidence of the Respondent that he earned \$700.00 per week and rejected the documentary evidence of the Paystub Details and N.I.B. Contribution Details. In so doing, the Tribunal did not give any reason for rejecting the documentary evidence in favour of the unsupported oral testimony of the Respondent. The requirement to give reasons was dealt with by the Court of Appeal in *Allan Christopher Charles Meek v City of Birmingham District Council* [1987] WL 492248 Bingham L.J., as he then was, giving the judgment of the Court stated:

"It has on a number of occasions been made plain that the decision of an industrial Tribunal is not required to be an elaborate formalistic product of refined legal draftsmanship, but it must contain an outline of the story which has given rise to the complaint and a summary of the Tribunal's basic factual conclusions and a statement of the reasons which have led them to reach the conclusion which

they do on those basic facts. The parties are entitled to be told why they have won or lost. There should be sufficient account of the facts and of the reasoning to enable the EAT or, on further appeal, this court to see whether any question of law arises; and it is highly desirable that the decision of an Industrial Tribunal should give guidance both to employers and trade unions as to practices which should or should not be adopted.

Nothing that I have just said is, as I believe, in any way inconsistent with previous authority on this subject. In UCATT v. Brain [1981] I.C.R. 542, Lord Justice Donaldson (as he then was) said at page 551:

“Industrial tribunals’ reasons are not intended to include a comprehensive and detailed analysis of the case, either in terms of fact or in law.... The reasons are then recorded and no doubt tidied up for differences between spoken English and written English. But their purpose remains what it has always been, which is to tell the parties in broad terms why they lose or, as the case may be, win. I think it would be a thousand pities if these reasons began to be subjected to a detailed analysis and appeals were to be brought based upon any such analysis. This, to my kind, is to misuse the purpose for which the reasons are given.”

A further statement was made by my Lord in Alexander Machinery (Dudley) Ltd v. Crabtree [1974] I.C.R. 120, and these observations are cited by Lord Justice Eveleigh in Varndell v. Kearney & Trecker Marwin Ltd. [1983] I.C.R. 683:

“It is impossible for us to lay down any precise guidelines. The overriding test must always be: is the tribunal providing both parties with the materials which will enable them to know that the tribunal has made no error of law in reaching its findings of fact? We do not think that the brief reasons set out here suffice for that purpose.”

Lord Justice Eveleigh adds the comment at page 694G:

“He is not, as I read that judgment, saying that in every case all these points to which I must refer must be adhered to, otherwise there will be an error of law in the decision of the tribunal.”

Lastly, in Martin v. Glynwed Distribution Ltd. [1983] I.C.R. 511 at page 520F, my Lord said:

“The duty of an industrial tribunal is to give reasons for its decision. This involves making findings of fact and answering a question or questions of law. So far as the findings of fact are concerned, it is helpful to the parties to give some explanation of them,, but it is not obligatory. So far as the questions of law are concerned, the reasons should show expressly or by implication what were the questions to which the industrial tribunal addressed its mind and why it reached the conclusions which it did, but the way in which it does so is entirely a matter for the industrial tribunal.”

18 The Tribunal was clearly under a duty to give reasons why it preferred the oral unsupported evidence of the Respondent to the documentary evidence of the N.I.B. Contributor and the Paystub Details.

19 In addition, the Tribunal did not state its reason for concluding why it decided that the Respondent's employment commenced in 2000 when the N.I.B. Contributory Summary did not support such a finding.

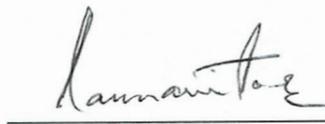
20 In our view, it was necessary for the Tribunal to make necessary finding of facts as to the correct wages of the Respondent and to state its reasons for arriving at that conclusion before calculating the amount of the award of compensation to which the Respondent was entitled.

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Zacca P.

A handwritten signature in blue ink, appearing to read 'Mottley', written over a horizontal line.

Mottley J.A.

A handwritten signature in black ink, appearing to read 'Forte', written over a horizontal line.

Forte J.A.