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INDUSTRIAL DISPUTES TRIBUNAL
AWARD
IN RESPECT OF
AN INDUSTRIAL DISPUTE
BETWEEN
SALADA FOODS JAMAICA LIMITED - COMPANY
AND
THE NATIONAL WORKERS UNION - UNION

REFERENCE:

By letter dated May 14, 1996 the Honourable Minister of Labour, Social Security and Sport pursuant to Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act, 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 the Salada Foods Jamaica Limited on the one hand and certain workers employed by the Company and represented by the National Workers Union on the other hand, over the dismissal of Mr. Lascelles Forsythe."

DIVISION:

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

Mr. R. G. Chambers - Chairman
Mr. M. B. Scott - Member, Sub-section 8(2)(c)(ii)
Mr. E. E. Dixon - Member, Sub-section 8(2)(c)(iii)

PARTIES:

The Company was represented by -

Ms. A. Robertson - Attorney-at-Law
Mr. R. Parkins - Managing Director
Mr. L. Barnett - Manager, Industrial Relations

The Union was represented by -

Senator N. Clarke	-	Deputy Island Supervisor
Mr. D. Doray	-	Senior Negotiating Officer
Mr. H. Henry	-	Chief Delegate
Mr. L. Forsythe	-	Aggrieved Worker

Some worker delegates were also in attendance.

Briefs were submitted by both parties and oral submissions made during ten (10) sittings between the 16th September, 1996 and 8th May, 1997.

BACKGROUND TO THE DISPUTE:

The dispute arose when Salada Foods Jamaica Limited refused to comply with the National Workers Union's request that the Company re-employ a worker whom it had dismissed on the allegation of dishonesty, after that worker was exonerated of the same charge in the Resident Magistrate Court. The matter was discussed at the local level and at the Ministry of Labour but was not resolved.

THE COMPANY:

The Company represented that the ground of Salada's opposition to the worker's re-instatement is explicitly expressed in Miss Robertson's opening address: "The dispute revolves around the issue as to whether an employee found not guilty of a criminal charge should be re-employed by the Company. That is the issue before the Tribunal".

The Company's case is that Mr. Lascelles Forsythe, an employee with over twenty three (23) years service, was stopped and searched by a policeman in the presence of the Company's Chief Security Officer along Olympic Way at around 11:15 a.m. on the 8th September, 1995. During the search numerous sachets of Salada's coffee were found stuffed in his pockets and work helmet. He was taken, resulting from the find, to Hunt's Bay Police Station where the sachets were counted and discovered to have amounted to one hundred and twenty four (124). A request was made by the police for someone from the Company to attend at the station to identify the sachets and the individual found in possession of them. The Managing Director responded.

The sequel to the identification is that:

- (1) Mr. Forsythe's employment contract was terminated on the ground that he removed the Company's property without authorization.

- (2) He was charged by the police with larceny of his employer's coffee, brought before the court and was acquitted on the 5th day of March, 1996.

Shortly after his acquittal the Company received a letter from the National Workers' Union dated 13th March, 1996, requesting that, arising from the dismissal of the case against Mr. Forsythe he be reinstated in his job. The parties met on the 19th March, 1996 and discussed the claim. On being unable to arrive at an agreement they sought and obtained the assistance of the Ministry of Labour. A meeting at the Ministry on the 22nd April, 1996 failed to resolve the issue, so the matter was referred to the Tribunal for its determination and settlement.

THE UNION:

Senator Clarke submitted that he was not appearing before the Tribunal to argue that Mr. Forsythe was innocent, but to prove to the Tribunal that the Company acted unreasonably by dismissing Mr. Forsythe without complying with the requirements of the Company's Disciplinary Procedure - a Procedure that was tendered in evidence and to which we shall return later.

The principal witness for the Union was Mr. Forsythe himself, whose account of his involvement with the police on the 8th September, 1995 was plainly a 'cock and bull' story. He testified that on that day he was walking along Olympic Way at around 11:30 a.m. when a white motor car stopped beside him and a short man alighted. This short man, after asking him where he worked, searched him. When he did not find any unauthorized items on him, the short man remarked that all the workers at Salada were thieves, pushed him in the car, took him to Hunt's Bay Police Station and seated him in a large room. The short man, who had revealed that he was a policeman when he reached the station, came to him and told him to lend him his helmet and he complied. On receiving the helmet the policeman went into a room. On his return he showed him, Mr. Forsythe, some things in the helmet and phoned Mr. Parkins shortly afterwards. Some time after Mr. Parkins arrived and identified him, the officer handed him over to another police officer who "put me in a cage".

He got bailed later that day and returned to Salada Foods around 2:20 p.m. but was told by a security guard at the gate that Mr. Parkins had given orders that he should not be allowed to re-enter the compound, so he went home where, on the 11th day of the said month he received a letter advising him that his services were no longer needed by the Company.

He went on to say that the court case against him was dismissed on the 5th March, 1996, so he returned to Salada on the following day to reclaim his job, but was informed by a member of management that his dismissal was permanent because the officials of the Company no longer trusted him. He thereupon reported the matter to the Union.

Senator Clarke argued, in continuation of his case, that Mr. Forsythe had a right to seek re-instatement because the management of Salada did not conduct an investigation into the allegation against Mr. Forsythe, as is required by the Company's Disciplinary Procedure, before they took the decision to dismiss him. He explained that the reason why the Union did not challenge the action before was because the delegates were of the view that they would not pursue a matter which also involves the police until that question was settled.

He concluded his submission by stating that the dismissal was unjustifiable and asked the Tribunal to order the Company to re-instate Mr. Forsythe and pay him his wages with effect from the 8th September, 1995.

OUR CONCLUSION

One can understand the feeling of frustration and betrayal that a Managing Director is likely to experience when he confronts a worker with over twenty (20) years service, in a police station charged with stealing in excess of one hundred and twenty (120) packets of his company's products on a single occasion, considering that he had spent thousands of dollars, even installing a scanner, in an attempt to stamp out the thieving of the Company's goods by its workers.

Nevertheless, regardless of the situation, a manager ought not to allow his eagerness to sever relationship with a worker to cause him to slacken his respect for the rules of natural justice, or to disregard the directions of the Company's Disciplinary Procedure. Article 1.6, paragraphs c, d and e, of the Procedure states that it aims to accomplish the following:

Paragraph c - Ensure that employees are informed of the disciplinary charges against them.

Paragraph d - Allow employees charged with committing breaches of discipline to state their case.

Paragraph e - Ensure that proper investigation of every case is undertaken before implementing disciplinary action.

The observance of those Provisions is obligatory if the action of the management is to be seen to be reasonable. There is no evidence before the Tribunal indicating that Mr. Forsythe was informed of the charge against him and that he was given an opportunity to defend himself before he was dismissed.

We therefore find that Mr. Forsythe was unjustifiably dismissed.

THE AWARD

The Tribunal awards that Mr. Lascelles Forsythe is to be immediately re-instated in his job.

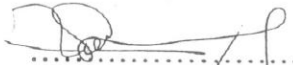
We also award that he is not to be paid any retroactive wages prior to the date of this Award.


DATED THIS 26th DAY OF MAY, 1997

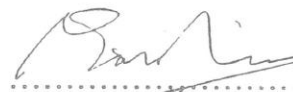



.....
R. G. CHAMBERS
CHAIRMAN

Witness:


.....
WINSTON G. YOUNG
SECRETARY TO THE DIVISION


.....
M. B. SCOTT
MEMBER


.....
E. E. DIXON
MEMBER