

INDUSTRIAL DISPUTES TRIBUNAL

Dispute No: IDT 28/2009

SETTLEMENT OF DISPUTE

BETWEEN

J. WRAY & NEPHEW LIMITED

AND THE

NATIONAL WORKERS UNION

AND THE

AWARD

I.D.T. DIVISION

MR. CHARLES JONES C.D.	-	CHAIRMAN
MR. TREVOR GRAHAM	-	MEMBER
MR. EDWARD DIXON O.D.	-	MEMBER

NOVEMBER th 25, 2010

IDT 28/2009

INDUSTRIAL DISPUTES TRIBUNAL

AWARD

IN RESPECT OF

AN INDUSTRIAL DISPUTE

BETWEEN

**J. WRAY & NEPHEW LIMITED
(THE COMPANY)**

AND THE

**NATIONAL WORKERS UNION
(THE UNION)**

REFERENCE:

By letter dated December 21, 2009, the Honourable Minister of Labour and Social Security, in accordance with provisions of Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement, in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference was as follows:

"To determine and settle the dispute between National Workers Union on the one hand and J. Wray & Nephew Limited on the other hand over the dismissal of Mr. Linton Douglas."

DIVISION:

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

- Mr. Charles Jones C.D. - Chairman
- Mr. Trevor Graham - Member, Section 8(2) (c) (ii)
- Mr. Edward Dixon O.D. - Member, Section 8(2) (c) (iii)

REPRESENTATIVES OF THE PARTIES:

The **Company** was represented by:

- Mr. Conrad George - Attorney-at-Law
- Miss Kimone Tennant - Attorney-at-Law
- Mrs. Greta Bogues - General Manager
- Mrs. Andrea Hardware - Head, Human Resources

The **Union** was represented by:

- Mr. Danny Roberts - Deputy Island Supervisor
- Mr. Roger Simmons - Chief Delegate

Mr. Linton Douglas the aggrieved worker was in attendance

SUBMISSIONS AND SITTINGS:

Briefs were submitted by both parties who made oral submissions during nine (9) sittings held between April 26, 2010 and October 21, 2010.

BACKGROUND BASED ON BRIEFS AND EVIDENCE SUBMITTED BY THE PARTIES

Company's Case

During the period July 14 – 19, 2008, a total of 198 cases of White Overproof Rum were lost from the Company's premises. The Company commenced an internal investigation and reported the incident to the Police who requested the Company to suspend its internal investigations.

The Company was subsequently informed by the Police that Mr Linton Douglas was the subject of the Police Investigation into the incident and he was therefore interviewed by the Police.

In January 2009 the Police updated the Company on their investigation and advised that the Company could go ahead with its internal investigation. The Company, in its investigations asked Mr Douglas several questions pertaining to telephone calls made by him in the middle of the night to the security guards on the premises during the period of the incident and he refused to answer, giving no reason for his refusal.

At a meeting on May 11, 2009 he was given another opportunity to explain his failure to answer the questions, and through his Union Officer declined to take any part in the meeting.

The Company further contends that at the meeting and in the presence of Mr Douglas' Union Officer, the Company explained to Mr Douglas that it was entitled to a response from him to questions that were –

- (i) reasonably and properly put to him as an employee; and
- (ii) part of the Company's investigation into the disappearance of a very large quantity of its products.

The Company advised that they further indicated to Mr Douglas that his refusal to answer the relevant questions amounted to a breach of his contractual duty and that this had led the Company to lose trust and confidence in him. He was again given the opportunity to explain his actions, but through his Union Officer declined to do so.

The Company summarised the circumstances leading to the dismissal of Mr Douglas as follows:

“7. The Company’s position is that the Complainant was obliged, as part of his duty of good faith and fidelity, to answer the questions put to him by the Company. His failure to answer amounted to a repudiatory breach of his contract of employment, entitling the Company to dismiss him summarily, which it did after a hearing at which he failed to give any reasons/justification for his misconduct. Accordingly, the Company was justified in dismissing the Complainant.”

Union’s Case

The Union contends that on April 1, 2009 Mr Douglas was requested to attend an interview on the following day, April 2 as part of the investigation into the disappearance of a quantity of White Overproof Rum in July 2008.

On April 14, the Company wrote to Mr Douglas on the subject of 198 missing cases of White Overproof Rum from the Platform in the Production South Bottling Hall. The letter stated that “based on our investigation you are hereby summoned to attend a hearing into the matter.”

On April 28, 2009 a disciplinary hearing was held. At the hearing the Union pointed out that the Company needed to lay out a charge in writing as to why a hearing was being held. It was reported that the letter of April 14 previously referred to was not received by the Union, and there was a fifteen minute break to allow Mr Douglas to retrieve his copy. The meeting was reconvened at 10:15 a.m. with the letter not found and another meeting scheduled for May 4, 2009.

Two letters were then written to Mr Douglas. The first, dated May 4, 2009 terminating his services with effect from 11th May, 2009. This letter made reference to a meeting of the 11th May 2009 seven (7) days after the date of the letter of termination stating that he, Mr Douglas had failed to answer questions concerning a number of telephone calls made during the period July 14 – 19.

The second letter was dated May 4, 2009 with a continuation sheet dated May 5, 2009. In that letter Mr Douglas was asked to provide the Company with answers to questions regarding telephone calls made to Messrs Palmer and Brown [security guards] during the period July 14 – 19, 2008. and that he refused to answer them.

The letter also stated that “The Company is entitled to answers from you to these questions and your refusal to provide such answers amounts to a serious breach of your contractual duties as an employee, and the Company has lost trust and confidence in you as a result.” The penultimate paragraph noted that “The Company will reconvene the hearing, at which evidence will be presented to substantiate the charge, and you/or your Union representative will have the opportunity to respond.”

At a meeting of May 4, 2009 the Company noted that it was not linking Mr Douglas to the missing white rum or accusing him of being involved, but simply wanted answers to questions surrounding the telephone calls.

The Union in its brief also stated as follows:

“2.7 The letter dated 4th May, 2009 terminating Mr Douglas’ service was received by the union on May 12, 2009. The company informed the union that the matter was the subject of a criminal investigation and that the Loss Prevention Department had obtained phone records which it wanted Mr. Douglas to substantiate. The company then proceeded to tender the phone records in evidence, answered questions of clarification and concluded their presentation. The Union in its presentation said it believed that there was no case to answer, and since the matter was the subject of criminal investigation, Mr. Douglas was advised by his attorney not to answer any question until a formal charge against him has been laid. The union objected saying that it had not laid out its charges and had not concluded its presentation. [ibid]

2.8 However, Mr Douglas received a letter at the end of the meeting advising him of a new date

for the hearing, May 11, pointing out that this was “at the request of the union” [Appendix 6].

2.9 At the hearing of May 11, 2009 the Union reiterated its position that it believed that based on the charges, Mr. Douglas had no case to answer and that the company insistence that “they had not laid out their charge ... [and] subsequently tried to introduce some new charges...” was wrong. [Appendix 7 (hearing of May 11)]”

Findings

The Company’s case spoke to a loss of trust and confidence in Mr Douglas because of his refusal to answer questions relating to the loss of goods which resulted in a financial loss to the Company.

It was noted that Mr Douglas was given the opportunity by the Company to answer the questions but he refused, stating that he was advised by his lawyer “do not answer any questions to incriminate you”.

The Union has stated that the matter giving rise to disciplinary action against Mr Douglas was not clearly communicated to him in writing. The Tribunal noted the statement of the Union that “It may be true to say that the questions to which the Company sought answers were “reasonably and properly put to Mr Douglas.”. The real issue however, has to be whether his refusal to answer was “unreasonable, given the circumstances of the case”.

The Tribunal considered the submission of the Union that the letter of dismissal which was dated the 4th May 2009, made reference to a meeting on the 11th May and so acted “prematurely and prejudicially in terminating the service of Mr Douglas”.

The Tribunal also took into consideration the Right of Silence as purported by the Union.

In arriving at its decision, the Tribunal was mindful that one of the cardinal principles between employers and employees is one of trust. It was also recognised that the more senior the employee is in the hierarchy of a Company's staff structure, the greater is the expectation of employee co-operation and trustworthiness. The Company had suffered a financial loss by virtue of the fact that a large amount of its goods went missing.

Certain details that came to light during the investigation conducted by Management led management to believe that Mr Douglas, who held a supervisory position had information that could assist them with the investigation. Mr Douglas by refusing to answer the questions placed himself in a situation in which it was difficult for the relationship between himself and the company to continue.

The question as to the reason for the telephone calls made between Mr Douglas and the security guards in the middle of the night, the Tribunal agreed, would cause any reasonable employer to lose trust and confidence.

The Tribunal agreed that it was Mr Douglas' right not to answer questions, but was also cognizant of the fact that by so doing, he provided the Company good reason to conclude that there was a breach of trust. His refusal to answer the questions was sufficient, in the Tribunal's view, to erode the Company's trust and confidence in him. This is based on the fact that he had supervisory responsibilities and it was the Company's view that he could have information that was crucial to their investigation to determine exactly how the goods went missing.

The Tribunal also recognised the administrative blunder that took place in the issuing of letters, but was of the view that this did not provide just reason to vary its finding.

Award

The dismissal of Mr Linton Douglas was justifiable.

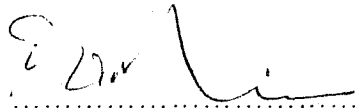
DATED THIS 25th DAY OF NOVEMBER, 2010



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Charles Jones C.D.
Chairman

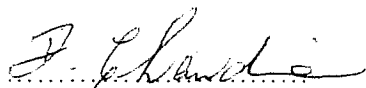


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Trevor Graham
Member



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Edward Dixon O.D.
Member

Witness:



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David Chandia (Mr.)
Secretary to the Division