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**TRINIDAD AND TOBAGO**  
**TRADE DISPUTE NO. 528 OF 2016**

**IN THE INDUSTRIAL COURT**

Between

**BANKING, INSURANCE AND GENERAL  
WORKERS UNION -Party No.1**

And

**MINISTRY OF WORKS AND TRANSPORT  
(UNEMPLOYMENT RELIEF PROGRAMME DIVISION)  
-1<sup>st</sup> Party No. 2**

**CHIEF PERSONNEL OFFICER -2<sup>nd</sup> Party No. 2**

**CORAM:**

<b>Her Honour Mrs. Heather Seale</b>	<b>-Chairperson</b>
<b>Her Honour Ms. Bindimattie Mahabir</b>	<b>-Member</b>
<b>His Honour Mr. Neil Mohammed</b>	<b>-Member</b>

**APPEARANCES:**

Mr. D. Devenish )  
1<sup>st</sup> Vice President )-for Party No.1

No appearance )-for 1<sup>st</sup> Party No.2

Ms. M. Papoonsingh )  
Attorney-at-law )-for 2<sup>nd</sup> Party No.2

**Dated: October 25, 2019**

**JUDGMENT**

**Delivered by Her Honour Mrs. Heather Seale**

1. This trade dispute between the Banking, Insurance and General Workers Union ("**the Union**"), the Ministry of Works and Transport (Unemployment Relief Programme Division) ("**the Ministry**") and the Chief Personnel Officer ("**CPO**"), raises the question of employment by Ministries of Government in special relief programmes intended for short term-employment. In many instances, as in this case, the aim of short-term employment is displaced and workers, like Ms. Alicia Lawrence ("**the Worker**") are kept on for prolonged periods in circumstances that take on the character of permanent long term employment akin to employment in the public service, where promotion to higher positions is possible.
2. After many years of unbroken service in such circumstances, suddenly against the grain of good conscience and good industrial relations practice, a worker is dismissed without reason, or compensation for their years of service and the Court is asked to uphold such a dismissal. This trade dispute epitomises this type of dismissal.
3. All of the parties filed their written statements of evidence and arguments. However, only the Union called evidence in support of its case. The Ministry attended one hearing of the matter but failed to attend hearing on the day the Worker gave her evidence. Therefore, the Worker's testimony was subject to cross-examination only by the CPO and remained largely unchallenged.

## **Background**

4. The Worker was temporarily employed in the Ministry of Local Government from March 1, 2004 as a Material Supervisor in the Couva/Tabaquite/Talparo Region. Her letter of employment did not state a duration of employment. By letter dated May 4 2007, she was appointed on a temporary basis as an Engineering Assistant at the Head Office of the Ministry of Local Government in the URP programme. Her appointment was for three months effective April 2, 2007. She was employed from July 2, 2007 in the same position of Engineering Assistant. It would appear that she continued in that position until her employment was terminated by letter dated September 22, 2014. Her termination was with immediate effect. The reason given for the termination of her services was the restructuring of the URP.

5. The Worker challenged her dismissal and it was reported to the Court as Trade Dispute No. 155 of 2015. In a Consent Order dated April 26, 2017, it was agreed between the same parties who now form the parties to the instant trade dispute that the Worker be re-employed; that she be paid as damages thirteen months' pay and further that her past service would remain intact.

## **Material Facts/Claims of the Parties**

6. Following the Consent Order, by letter dated November 30, 2015, the Worker was reemployed in the position of Engineer in the URP Division commencing December 4, 2015. Her salary was eight thousand and fifty dollars (\$8,050.00) per



month with a monthly Travelling Allowance of one thousand dollars (\$1,000.00).

7. She was employed as a Senior Engineer in URP on a month to month basis with effect from February 18, 2016, at a monthly salary of eight thousand six hundred and twenty-five dollars (\$8,625.00) and a travelling allowance of one thousand dollars (\$1,000.00) per month. Her letter of appointment, stated that her appointment maybe terminated by either party "at short notice".
8. It is the Union's claim that the Worker's employment was terminated because of certain discrepancies in estimates submitted regarding a Riverside Project in March/April 2016. The Worker along with two other engineers visited the site and took their own measurements and realised that the initial measurements were incorrect. It is alleged that the value of the work was overstated by seven hundred thousand dollars (\$700,000.00.) Their findings were brought to the attention of the Workers' superiors.
9. On April 21, 2016, at around 1:20 p.m. the Worker received a telephone call from the Programme Manager, Mr Clay Thomas. It is alleged that she was told the Minister had some issues and that the Human Resource (HR) Department would be contacting her. Later that day the HR department called and told the Worker that she had to come to collect a letter addressed to her. On April 22<sup>nd</sup> she went to the HR Department and was given a letter bearing a date of March 14, 2016. The letter informed her of the immediate termination of her appointment as Senior Engineer. The letter stated that ***"a decision was taken by management to terminate your***

**employment with immediate effect.”** She was paid the equivalent of one month’s salary in lieu of notice.

### **Contentions of the Union**

10. The Union contended that:-

- i. No reason was given to the Worker for terminating her services immediately.
- ii. No relevant information was provided to the Worker nor was she given the opportunity to be heard before the decision was made to dismiss her. She was summarily dismissed.
- iii. The Worker’s dismissal was contrary to ILO Convention 158.
- iv. The dismissal of the Worker was due to her vigilance in discovering a fraud.
- v. The back dating of the letter was a clumsy attempt to hide the true reason of her dismissal.

11. The Union concluded that the actions of the employer were unconscionable, harsh and oppressive and not in keeping with the principles and practices of good industrial relations. It asked the Court to find for the Worker and in keeping with its powers under section 10 (3) and (4) of the *Industrial Relations Act*, Chap. 88:01, (“***the Act/IRA***”) order the employer to pay the Worker the sum of three hundred thousand dollars (\$300,000.00) in damages.

### **Contentions of the Ministry**

12. The Ministry asserts that among the many functions assigned to it, is the carrying out of general oversight responsibility for



URP. This function entails responsibility for the general policy direction of the URP at the high level with respect to both administration and operations. The day to day functioning of the URP is however, the responsibility of the various executive and mid-level managers that are assigned to the URP from time to time.

13. The general mandate of the URP is the execution of works toward the construction or maintenance of relevantly minor infrastructure in Trinidad, as well as the execution of other works as may be mandated or required from time to time by the Minister of Works and Transport in order to fulfil an identified social need. In order to execute this general mandate, the URP relies on a cadre of unemployed persons who are thereby provided with temporary short term employment on a rotational basis. In this regard, the URP is able to fulfil its core mandate, this being, the provision of short term employment to citizens of Trinidad and Tobago who are otherwise unemployed.

14. In order to facilitate the general day to day functioning of the URP, persons who are employed on the permanent establishment of the Public Service are assigned to the URP. In order to buffer this cadre of permanent public servants and to help facilitate the execution of its general mandate, the URP also employs persons on contract on a less temporary basis than described above. These persons are engaged on month to month contracts with the proviso that those contracts may be terminated at short notice.

15. The Ministry contended that in the circumstances, :-

- a. Ms Lawrence's appointment could be terminated at short notice as was highlighted in her initial letter of appointment. The letter also advised that in lieu of the notice, she would be paid the equivalent of one month's salary.
- b. Owing to the fact that the employment was on a month to month basis and could be terminated at any time at short notice, it follows that the post could not be one which would naturally morph into a post with long term tenure.
- c. The Worker could not reasonably have expected to enjoy any tenure that gives her the right to assert a claim to benefits that are usually enjoyed by a Worker with long term tenure in any organisation.
- d. Owing to the Worker's prior knowledge that her contract could be terminated at any time at short notice and considering the payment to her of one month's salary, she suffered no detriment.
- e. The payment of one month's salary in lieu of notice is a common and accepted term which appears in the contract of persons employed by the State or State-affiliated entities.
- f. The provision of one month's salary in lieu of notice is meant to act as a buffer for the employee and is consistent with good industrial relations practice.

16. The Ministry's prayer was that the trade dispute be dismissed as there was no evidence that it acted improperly, unreasonably, illegally or irrationally in exercising the option as provided under the terms of the Worker's contract to terminate her employment with the URP at short notice.



## **Contentions of the CPO**

17. The CPO maintained that its role is to set terms and conditions for persons employed on contract pursuant to the 'Guidelines for Contract Employment in Government Ministries, Departments and Statutory Authorities' and pursuant to a request from the relevant Ministry. However, in the instant dispute, the Worker was not hired pursuant to the Guidelines and consequently, the CPO was not required to set terms and conditions for her neither did it direct, participate nor play any role in the dispute at issue.
18. The URP falls under the purview of the Ministry of Works and Transport. The URP is administered exclusively by Cabinet through instruction given to the relevant line Ministry. The day to day functioning of the URP is the responsibility of the various executive and mid-level managers that are assigned to the URP from time to time.
19. For these reasons the CPO prays that the instant trade dispute be dismissed against it on the ground that it played no role in the facts that gave rise to the instant dispute or in the employment of the Worker.

## **The Issues**

20. Based on the facts, the issues for the Court's determination are, the nature of the Worker's contract of employment as well as the nature of her dismissal, that is, was it in keeping with the terms of her contract of employment/ and or good industrial relations practice?



## The Law

21. Pursuant to section 10 (3) of the *IRA* the Industrial Court is empowered :-

***“(3) Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall—***

***(a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;***

***(b) act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations.”***

22. By section 10 (4), the Court is empowered in any dispute concerning the dismissal of a worker, to order the re-employment or re-instatement of any worker, or the payment of compensation or damages whether or not in lieu of such re-employment or re-instatement, or the payment of exemplary damages in lieu of such re-employment or re-instatement.

23. Under section 10 (5) an order made under 10 (4) may be made where in the opinion of the Court a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice. An order for compensation or damages shall not be bound to follow any rule of law for the assessment of compensation or damages and the Court may make an assessment that is in its opinion fair and appropriate.

## Nature of the Employment Contract

24. In RSBD No. 4 of 1996 between the *Oilfields Workers' Trade Union and Schlumberger Trinidad Incorporated*<sup>1</sup>, the Court in considering whether a worker who was terminated after a series of six-month contracts and whose contracts contained clauses which sought to disentitle him to certain benefits, was entitled to be paid severance benefits in accordance with the *RSBA* had this to say at p 124:-

**“...the Court must not lose sight of its function to ensure that the intended beneficiaries of such social engineering are not deprived of their rights by reason of their relatively inferior bargaining strength. ...We venture to say that contracts containing terms such as those found in successive short –term contracts which the aggrieved was required to sign constitute a fraud... and are contrary to ... the common good. It is for the protection of workers such as the aggrieved that the Court must refuse to enforce such a provision in a contract of employment, where to enforce it would result in depriving the worker of benefits which Parliament had conferred on him by statute.”**

25. The above reasoning has been followed by this Court in a number of matters including Trade Dispute No. 250 of 2012 between *Public Services Association of Trinidad and Tobago and the Housing Development Corporation*, dated June 18, 2015, which the Union cited.

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<sup>1</sup> Dated February 24, 1997.



## Principles of Good industrial Relations Practice

26. One of the leading cases on the principles of good industrial relations practice is Trade Dispute No. 2 of 2001, *Banking, Insurance and General Workers Union v Hindu Credit Union Co-operative Society Limited* dated July 31, 2001. It is now well settled that among the principles of good industrial relations practice are that the employer should properly investigate any allegation of misconduct made against a worker; except in exceptional circumstances, a worker should be given an opportunity to be heard before being dismissed and the opportunity is to be given before the decision to dismiss is made.

27. These principles are consistent with *ILO Convention C158* and *Recommendation 166* on the Termination of Employment, which the Court has commended as setting out the best statements of good industrial relations practice. In keeping with C158, a Worker is entitled to be given a reason for his dismissal.

28. In Trade Dispute 140 of 1997 between *Bank and General Workers Union v Home Mortgage Bank*<sup>2</sup>, the Court said at pp 107 and 108:-,

***“At common law, an employer is not bound to give any reason for dismissing a worker. The principles of good industrial relations practice, on the other hand, require an employer not only to inform a worker of the reason or reasons for a proposed dismissal but also to give a worker, save in exceptional circumstances, a fair opportunity to be heard before proceeding with a decision to***

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<sup>2</sup> Dated March 3, 1998

***dismiss for such reason or reasons....The Act's protection applies to all persons who work under contracts of employment, regardless of the duration of the contract. In our opinion, it is just as possible for an employer to dismiss a worker under a short-term contract of employment harshly and oppressively or contrary to the principles of good industrial relations practice as he can in the case of a worker under an indefinite contract of employment, ...If an employer dismisses a worker under a short-term contract of employment harshly or oppressively or contrary to the principles of good industrial relations practice, the Court will take the duration of the contract into account for the purpose of assessing the quantum of damages to be paid by the employer but its short-term character is no defence in such a situation."***

### **Summary Dismissal**

29. On the question of summary dismissal, the Court considers that such action is justified only in exceptional cases. In the *Hindu Credit Union case supra* His Honour, Khan P. indicated that:-

***"Depending on the circumstances, an employer's failure or refusal to afford a Worker an opportunity to be heard before dismissal may result in the Industrial Court finding that the dismissal was not in accordance with the principles of good industrial relations practice".***

### **Findings**

30. The Worker was dismissed with immediate effect and was not given a reason for her dismissal. This constitutes a summary dismissal which is contrary to the principles of good industrial relations practice. The Ministry put forward no exceptional



reasons to justify its decision. The instant dismissal was against the grain of the earlier dismissal of the Worker by the Ministry. On that occasion she was told that her dismissal was as a result of a restructuring of the programme. In that earlier dismissal there was also mention of the likelihood of payment for her service.

31. The Court notes that in cross-examination by the CPO, the Worker admitted that she made no written complaint about her allegation that her dismissal was linked to discrepancies she and others discovered in the Riverside project. The Court has also observed that the report of the trade dispute by the Union to the Minister of Labour and Small Enterprise Development made no allegations of her dismissal resulting from victimisation associated with the said claims.

32. The Court finds it regrettable that the Ministry did not call any evidence and allows a cloud to be left hanging over the true reason for the Worker's dismissal. Even more troubling is the fact that public officials continue to dismiss workers after prolonged periods of service on outdated common law principles and notwithstanding the jurisprudence of this Court and ILO Convention C158 and seek to defend their actions. Contrary to the Ministry's contention, its actions were not in keeping with the principles of good industrial relations practice.

33. In the circumstances, the Court finds that the Worker's dismissal was harsh and oppressive and contrary to good industrial relations practice. The Court considers that in making an award, the Worker's past service should be taken into account. The Court is satisfied that the damages awarded

to the Worker in the Consent Order in 2017, in Trade Dispute No 155 of 2015 was related to the period between her dismissal and re-employment. It did not constitute payment for past service. Moreover, the said Consent Order stated that on her re-employment her past service remained intact. The documentary evidence showed that the Worker began employment in March 2004 and this was confirmed in her cross examination by Counsel for the CPO.

34. The Court records it's thanks to Counsel for the CPO who found herself having to mount a defence which on the facts should have been done by the Ministry.

#### **The Court's Order**

35. In keeping with equity, good conscience and the substantial merits of this case, the Court finds it fair and appropriate that the Ministry of Works and Transport pay to the Worker Alicia Lawrence, the sum of one hundred and three thousand five hundred dollars (\$103,500.00) on or before December 31, 2019. The Court dismissed<sup>§</sup> the trade dispute against the CPO. HDS

36. It is so ordered.

37. This judgment was delivered pursuant to Section 7 (5) of the Industrial Relations Act.

**Her Honour Mrs. Heather Seale  
Chairperson**

**Her Honour Ms. Bindimattie Mahabir  
Member**