



REPUBLIC OF TRINIDAD AND TOBAGO
GENERAL SERVICES DIVISION T.D NO. 577 OF 2014

IN THE INDUSTRIAL COURT

Between

**NATIONAL UNION OF GOVERNMENT
AND FEDERATED WORKERS - PARTY NO. 1**

And

CHIEF PERSONNEL OFFICER - PARTY NO. 2

CORAM:

His Honour Mr. R. Lutchmedial	- Vice President
Her Honour Mrs. J. Christopher-Nicholls	- Member
His Honour Mr. M. Mitchell	- Member

APPEARANCES:

Mr. C. Simpson)	
2nd Deputy Secretary General)	For Party No. 1
Ms. A. Davis)	
Attorney-at-Law)	For Party No. 2

DATED: FEBRUARY 26, 2019

JUDGMENT

Delivered By His Honour Mr. R. Lutchmedial

“He who comes to equity must come with clean hands and He who seeks equity must do equity.” These maxims were not developed for students of the law only but for all who seek justice. Section 10 (3) (a) and (b) of the Industrial Relations Act stipulates.

“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.”**

This Trade Dispute (the dispute) as reported by the National Union of Government and Federated Workers (the Union) as the Recognized Majority Union (RMU) concerns the termination of the services on December 14, 2005 of KENDELL ROMEO, Relief Watchman (the Worker). The Chief Personnel Officer (the CPO) is deemed to be Employer by virtue of section 2 (4) (a) of the Act.

The Worker was employed as a Leave Relief Watchman in the Insect Vector Control Division, Ministry of Health and as a daily rated

employee based at premises situate at Guaico in Sangre Grande (the Compound).

There was an altercation on the 6th October 2005 on the compound involving the Worker and State Police. He was arrested. He did not work on that day since another watchman was called out as a result of his no-show at 8.00 a.m., the time at which he was due to pick up duties. The Worker alleged that he suffered injuries as a result of the altercation and sought medical attention. He obtained several medical reports granting to him sick leave for various periods.

By a letter dated 14th December, 2005 but delivered to the Worker on 11th January, 2006, the Worker was warned that his absence from duty for more than two days without approval constituted abandonment of duty. He was given seven days from the receipt of the letter to inform the office of his intention to continue being employed, failing which disciplinary action will be taken. The Worker replied on the said day indicating his willingness to continue working. The Worker alleged that he was never given any formal notification as to his status nor was any enquiry held concerning his absence from work.

The CPO contended that the Worker absented himself for months without any communication to it and was also guilty of blatant delay in submitting medical certificates, both actions being contrary to the principles of good industrial relations practice. Further, the CPO argued that there was no termination of the Worker's employment by the CPO but rather an abandonment of his job by the Worker himself.

We accept the contentions, arguments and submissions of the CPO and hereby dismiss this Trade Dispute for the following reasons:

1. The Worker has admitted that Sealy, the Estate Constable on duty, could give him instructions if authorized by Miller so to do. There is no evidence that Sealy was not acting on Miller's instructions when she informed the Worker that another watchman had been called out to replace him.
2. The Worker refused to obey a lawful and legitimate instruction from Sealy. More than that, he refused to obey instructions to leave the compound when asked to do so by the Police. His subsequent arrest and the consequences that flowed were of his own making.
3. There is no evidence that the Worker ensured that "medical certificates" were tendered or delivered to the appropriate office in a timely manner.

4. The Worker has admitted that, prior to being arrested, he deleted Mohammed's name from the attendance register and interposed his own. That action on his part was wrongful, malicious and dishonest.
5. The Worker has not disputed or negated the CPO's allegation and evidence that he was warned for falsification of documents at work on a previous occasion.
6. There is evidence that the medical certificates, at least one of them, was tampered with after its issuance by the doctor.
7. The medical evidence suggested that the Worker suffered soft tissue injury as a result of the altercation with the police. The X-Rays were normal. He was discharged on analgesics. Such inquiry could not have prevented the Worker from reporting for duty on a timely and regular manner.
8. The true reason for the Worker's injury was gunshot wounds suffered by him as certified by doctors he attended.
9. One such medical certificate stamped 12th April, 2006 was falsified as confirmed by a letter dated 7th August, 2008, by the Medical Officer who issued it.
10. The Worker was warned by letter dated 16th August, 2004 about his manner of dress and about a report that he broke and entered the Ministry of Works office (which is on the same compound). He refused to sign a copy of the said letter

evidencing his receipt of the original. The warning to the Worker is relevant when looking at all the circumstances surrounding the termination of the Worker and whether the Employer acted reasonably or not and in making the final decision to deem the Worker as having abandoned his job. It is an objective circumstance which goes to the equity of the case and the substantial merits. See *Airbus UK Ltd. v Webb* [2008] EWCACiv49. The CPO was entitled to take the previous warning into consideration in reaching a conclusion that the Worker was deemed to have abandoned his job.

11. The Worker submitted, according to his own evidence, medical certificates via several persons and to different offices of his line Ministry. It is passing strange that he did not submit **ALL** of the certificates to the Guaico office or to Miller's office at Caura. It appears that it was of no concern whether or not the certificates were received or whether his absences were approved or not. In any event, Miller by letter dated 15th February, 2006, confirmed that the worker submitted to the St. Joseph office medical certificates on the **10th February, 2006** for sick leave with effect from 21st November 2005, (15 days), 6th December, 2005 (7 days) 12th December, 2005 to 8th January, 2006 (28 days) and 16th January, 2006 (28 days). These certificates were delivered one month after the Worker

had received the letter dated 14th December, 2005 signed by Miller and delivered to him by Quashie. The Court in the *Fox International* case cited by the CPO stated: " ... The mere possession of a medical certificate does not by itself entitle a worker to be absent from work. The worker must make every diligent effort to inform his/her employer of the inability as soon as possible after the medical certification. Where a worker fails to so inform his/her employer, such a worker may find himself/herself in difficulties from which he/she might not be able to extricate himself/herself, even through this court." This Court adopts that views expressed by H.H. Khan.

The Worker cannot simply state "that I am still interested in working for the Ministry of Health." He must do more. A mere intention or interest to continue in an employment relationship is not enough. There must be some action by the Worker to support such intention or interest. There is no evidence that the Worker reported for duty or attempted to do so after the 22nd November, 2005, even after he had received the letter dated 14th December, 2005. Nor is there any evidence that he contacted anyone in authority and offered an explanation. As H.H. Khan also said in the *Fox International* case: "... A worker who finds it necessary to be away from work for such a long period of time

for medical reasons, especially in a small business of the kind conducted by the Employer in this case, must let the employer know of his/her inability, either personally, where that is possible, or through some relative or friend and must ensure that the medical certificate is tendered to the employer at the same time."

12. The Worker's employment was governed by the provision of the Circular No. 3 issued by the Personnel Department dated 22nd February, 1983. The cases referred to by the CPO in its closing submissions are all applicable to this dispute:- T.D. No. 1010 of 2008 NUGFW v Cadel Trading Ltd., T.D. No. 142 of 1992 CWU v Excellent Stores and T.D. No. 40 of 1990 OWTU v Trinidad and Tobago Printing and Packaging Ltd.

This Worker breached every known principle of good and proper industrial relations insofar as absence on medical grounds is concerned. In addition, for reasons already stated, his credibility is of serious concern and doubt to the Court. "He who comes to equity must come with clean hands." Clearly, this Worker did not observe this equitable maxim. Nor did he observe another which states that "he who seeks equity must do equity." The Worker cannot be

dishonest and disobedient to those in authority and then seek to have the Court give him comfort. He can get none.

The Court, acting in accordance with equity, good conscience and the substantial merits of the case before it and having regard to the principles and practices of good industrial relations finds and holds that the termination of the services of the Worker, KENDELL ROMEO by the CPO on 14th December, 2005 (as certified by the Minister) was reasonable in all of the circumstances and justified.

This Trade Dispute is hereby dismissed.

R. Lutchmedial
Vice President

J. Christopher-Nicholls
Member

M. Mitchell
Member

