



TRINIDAD AND TOBAGO
TRADE DISPUTE NO. 96 of 2017

IN THE INDUSTRIAL COURT

Between

COMMUNICATIONS WORKERS' UNION -Party No. 1

And

**MINISTRY OF COMMUNITY DEVELOPMENT,
CULTURE AND THE ARTS** -1st Party No. 2

CHIEF PERSONNEL OFFICER -2nd Party No. 2

CORAM:

H.H. Ms. Sandra Ramparas	-Chairperson
H.H. Mr. Kyril Jack	-Member
H.H. Mr. Mahindra Maharaj	-Member

APPEARANCES:

Ms. Q. Alleyne)	
Labour Relations Officer)	for Party No. 1
)	
Ms. A. Davis)	for 1st Party No. 2
Attorney-at-Law)	for 2nd Party No. 2

DATED: April 03rd, 2019

JUDGMENT

Delivered by His Honour Mr. Kyril Jack

This judgment is delivered in accordance with section 7(5) of the Industrial Relations Act chapter 88:01, as His Honour Mr. Mahindra Maharaj is no longer a member of the Court.

This Trade Dispute concerns the termination of the services of Phebe Warren (hereinafter referred to **“the Worker”**) effective July 4, 2016 by the Ministry of Community Development, Culture and the Arts (hereinafter referred to as **“the Ministry”**) and was reported to the Ministry of Labour and Small Enterprise Development by the Communication Workers Union (hereinafter referred to as **“the Union”**) on October 19, 2016. The unresolved dispute was subsequently referred to the Court for determination coming up for case management on April 7, 2017. Upon the Union applying for and being granted leave to join the Chief Personnel Officer (hereinafter referred to as **“the CPO”**) as a party to the Trade Dispute at a case management conference on April 7, 2017. The CPO was therefore joined as a party to the Trade Dispute.

THE UNION’S CASE

The Union’s case as gleaned from its evidence and arguments is as follows:-

- (1) The Worker was employed with the Ministry as a Business Operations Coordinator for the period August 4, 2016 to July 12, 2016 at a salary of nine thousand eight hundred and fifty dollars (\$9,850). During the month of August the Worker was given a copy of the guidelines for contract employment. During a visit to the Mediation Centres throughout the country in October 2014 the Worker observed that there was a surplus of grocery items about to expire and suggested to

other managers about sharing the stocks with other centres to minimize the stocks being unutilized.

(2) On April 17, 2015 the Worker received an email from Nicole Thomas, Business Operations Assistant II advising that her performance appraisal is approaching and further informing her that Ms. Beverly Harry Emmanuel, Executive Director would like confirmation to conduct the exercise on May 19, 2015. This however, never materialized. Sometime during 2015 the Worker went to Ms. Harry- Emmanuel to discuss a pending assignment as she needed her approval to go ahead. Ms. Harry-Emmanuel told the Worker she doesn't know why she (the Worker) is working here as she did not see the need for her being here.

(3) While working on her assignments in late October the Worker was informed by the Communications Department that Ms. Emmanuel instructed that they desist from sending any emails to the Worker concerning the said assignments. She was never informed about this instruction that was given by Ms. Harry-Emmanuel. The worker however, continued to use her initiative under a now strained relationship with Ms. Harry-Emmanuel and even used her personal funds to have tasks expedited as she felt it took too long for requests to be approved which hindered achievement of her deadlines. The Worker felt that her efforts to perform diligently were being sabotaged by the Executive Director and Ms. Douglas.

(4) On April 21, 2016 the Worker was called to the office of her immediate Supervisor. Ms. Harry-Emmanuel for a meeting. Ms. Harry-Emmanuel told her that she noticed that the Worker was not in the office for a period of time and

requested an explanation, The Worker explained to Ms. Harry-Emmanuel that she had been attending classes and had been trying to call her to inform her without success. The Worker said that she informed Ms. Kirl Douglas, Secretary to the Executive Director and got the Impression that she knew. Ms. Emmanuel informed the Worker that she will be given a letter that will ***“go against her file.”***

(5) The Worker was called by Ms. Harry-Emmanuel to her office on May 26, 2016 for a meeting concerning her performance appraisal where she was informed of the process and told that she is free to express any view she may have on her appraisal. The appraisal interview was conducted in Ms. Harry-Emmanuel's office on May 27, 2016. After discussions and comments about the Worker's performance. Ms. Harry-Emmanuel called the Human Resource Director, Ms. Beverly Reid-Samuel enquiring whether it was okay to offer a one year contract. The Worker was then informed that she will be offered a one year extension of her contract and she should put her comments on the appraisal and sign so that she could submit it.

(6) The Worker proceeded on vacation on June 22, 2016 which ended on July 1, 2016. Between July 4 and 11, 2016 the Worker made enquiries through the Human Resource Department about her status and was finally informed by Mr. Gerard Reverand, Senior Human Resource Officer that Ms. Harry-Emmanuel had changed her mind about her recommendation for a one year extension of her contract and indicated that she did not want the Worker in her division.. Efforts by the Worker to meet with Ms. Harry-Emmanuel were fruitless. On July 21, 2016 the Worker met

with the Honourble Minister of Community Development, Culture and the Arts, Dr. Nylan Gadsby Dolly to discuss her matter. She was informed that her grievance will be forwarded to the Permanent Secretary.

(7) On August 4, 2016 the Worker received a whatsapp message from Ms. Mareshah Creese, the Office Associate informing her that she needed to collect her belongings which were packed in two boxes and placed in the hallway outside the office.

(8) The Union is contending that the termination of the Worker's services was contrary to good industrial relations practices in that the poor evaluation of the Worker's performance was a ploy to place her in a negative light resulting in the non-renewal of her contract. The opportunity to be heard and to seek redress were treated callously as the Worker was not given consideration, her reputation was tarnished and she was terminated contrary to the rules of natural justice.

(9) The Union is seeking damages and any other award the Honourable Court deems reasonable.

THE COMPANY'S CASE

The Ministry and the CPO consolidated their response to the Union's case and would herein after be referred to as ***"the employer"***

Their case as contained in their evidence and arguments can be summarized as follows:-

- (1) The Worker was employed at the Ministry on a fixed term contract which ended by the effluxion of time on July 3, 2016. The CPO is deemed by Section 2(4) (a) of the Industrial Relations Act, Chapter 88:01 to be the employer of any worker employed by the government. The matter was referred to the Court by the Certificate of Unresolved Dispute dated January 19, 2017 concerning the alleged "termination of the services of Phebe Warren effective July 4, 2016.

- (2) By letter dated June 12, 2014 the Worker was offered employment on contract for a period of one year and eleven months in the position of Business Operations Coordinator, with the Community Mediation Division of the Ministry at a salary of nine hundred eight hundred and fifty dollars (\$9,850.00) assuming duties on August, 2016. The contract was due to end on July, 3, 2016. During her tenure there were several instances where the Worker failed to adequately perform her duties. These were concurrently highlighted both verbally and in writing to the Worker by her immediate supervisor Ms. Harry Emmanuel, Executive Director of the Mediation Services Division.

- (3) The issues raised in the performance appraisal included among other things the disclosure of internal communications to third parties by email dated November 3, 2015 in an effort to persuade the third party to accelerate the processing of a request. By email dated September 4, 2014 the Worker was informed by the Executive Director that it was unacceptable to reassign incomplete projects assigned to her to any other member of the Ministry. The Worker was further cautioned by the Executive Director by email dated November 3, 2014 about

performing and giving unauthorised instructions to other staff of the Ministry with disregard for the authority of various Managers. The appraisal report also noted the Worker's absenteeism after recording her attendance in the register.

- (4) This issue was raised with the Worker resulting in her being formally warned by the Executive Director by letter dated April 21, 2016 for perpetuating the falsification of her attendance record. The executive Director as head of the Department made the following comment in the said appraisal for the review of the Permanent Secretary of the Ministry:-

“Ms. Warren is recommended for a one-year contract during which time she would be expected to show significant improvement in her application to duty, her enthusiasm level of productivity and performance in general.”

- (5) The said performance appraisal was forwarded to the Permanent Secretary by memorandum dated May 22, 2016 stating the following:-

“Ms. Warren’s performance falls short of the requirements and expectation of the Division. However, with the right effort, attitude and commitment these shortcomings could be addressed.

In this regard I recommend that she be offered another contract for one year only. During that time her output and their outcomes would be closely monitored. Significant improvements are expected.”

- (6) The Worker did not contest the appraisal using the grievance procedure under condition No.11 of her contract which

indicated that she should have discussed same with the supervising office, and where no consensus was reached the matter should have been referred to the Permanent Secretary. The Executive Director indicated in a memorandum to the Human Resource Services that the demands of Community Mediation Division when juxtaposed with the poor performance appraisal of the Worker and in particular, those issues highlighted in the appraisal related to integrity such as falsification of attendance records and breach of confidentiality, had altogether resulted in her withdrawal of her recommendation for a one year contract for the Worker.

(7) The Worker's contract was scheduled to expire on July 3, 2016 and she proceeded on vacation leave before expiration on June 22, 2016. The Worker wrote the Permanent Secretary on August 9, 2016 indicating that she was informed by Mr. Gerard Reverand, Senior Human Resource Officer that the Executive Director had changed her mind about her recommendation and complained that she had a reasonable expectation that she would have been employed for another year. At a meeting on August 15, 2016 with the Director Human Resource, Ms. Beverly Reid-Samuel the Worker was allowed to raise her concerns. She was asked whether she wanted to meet with the Executive Director but declined the offer.

(8) The Employer contended that the Worker accepted the contents of her performance appraisal on May 27, 2016 and raised no verbal or written objection or issues through the grievance procedure. The Worker was informed that the performance appraisal contained merely a recommendation from the Executive Director to the Permanent Secretary

through the Director Human Resource and that a recommendation in an appraisal is not and cannot be held as being tantamount to an offer of employment.

- (9) The Employer further contended that they had good and proper causes and legal authority not to offer a one-year contract to the Worker and that in making the determination the Ministry took into consideration the Worker's poor performance and lack of integrity which did not meet the requirements for the position as well as the mounting demands of the Community Division. The Executive Director does not have the power or authority to offer employment to any worker but may make recommendations which must be reasonably justifiable to the Permanent Secretary and that only the Honourable Minister has the authority to definitively approve offers of employment.
- (10) It is further contended that the Worker was not adversely affected by the withdrawal of the Executive Director's recommendation to the Permanent Secretary since her contract of employment was for one year and the Worker was aware that it was due to expire by the effluxion of time on July 3, 2016 and no offer of further employment was made to her.
- (11) It is further contended that the Union's claim that the Ministry has terminated the services of the Worker by failing to offer her a contract for a period of one year after her abysmal performance is devoid of merit and should be dismissed.
- (12) Parties are seeking an Order from the Honourable Court that the claim is devoid of merit and that this trade dispute is dismissed.

THE EVIDENCE

The Worker was the Union' only witness while the Executive Director Ms. Harry-Emmanuel testified on behalf of the Employer. Both parties provided witness statements as well as *viva voce* evidence which primarily captured the essence of their respective cases.

The Worker complained that she was treated unfairly because the working relationship between a Ms. Douglas and herself became strained for reasons unknown to her. She also complained about the working relationship between herself and the Executive Director suffering the same fate. She expressed the view that she felt that her effort to perform diligently were being sabotaged. The witness testified that she did not agree with almost the entire performance appraisal as it did not reflect anything positive about her.

The evidence of the Employer and substantiated by its witness dealt essentially with what they considered to be the abysmal performance of the Worker as evidenced by the Worker's performance appraisal for the period of her contract. Ms. Harry-Emmanuel revealed that upon enquiring about the status of an edited draft which was to be submitted to the Manager, Corporate Communications, the Worker admitted to not following her instruction but instead sought vetting of the draft from an Officer of the United Nations Information Centre. Disclosing as it were confidential internal correspondence to a third party. The Worker admitting afterwards that she knew it was wrong to do so.

CLOSING SUBMISSIONS

Parties made oral closing submissions.

The Union

The Union focused its submissions primarily on the performance appraisal report and the withdrawal of the recommendation for contract renewal by Ms. Harry-Emmanuel. The Union expressed the view that the appraisal report was a ploy to dispense with the Worker's services since it did not reflect the true performance of the Worker. Ms. Alleyne for the Union made heavy weather of the withdrawal of the recommendation for a one-year contract that was made by the Executive Director and went on to describe it as unethical and deceptive claiming that it was made while the Worker was on vacation and she was not officially informed upon her return.

Ms. Alleyne submitted that the exercise of performance appraisal is aimed at assisting the incumbent to improve her performance and in the case of the instant matter would determine whether or not she receives another contract. The citations that were presented by the Union in support of its case while they addressed the issue of fixed term contracts they did not support the Union's case.

The Employer

The employer posited that the Worker's employment had come to an end on July 3, 2016 by the effluxion of time and thus she was not terminated on July 4, 2016 as claimed by the Union. Ms. Davis posited that the Worker's testimony under cross examination was

not truthful or forthright. She felt that the Worker's falsification of her attendance records and her conduct in comingling her personal funds with that of the Ministry went to the root of integrity.

Ms. Davis for the Employer pointed out that the Worker's performance was substandard as reflected in her performance appraisal, committing several infractions during her short tenure. The Worker breached confidentiality of the Ministry and she did not follow procurement procedure comingling her funds with that of the Ministry.

Counsel further submitted that the Employer had the right to choose its employees and that the Worker's employment contract did not contain any terms of automatic renewal.

The Employer is seeking an order from the Court that this trade dispute is dismissed on the basis that the Union's claim is devoid of merit.

ANALYSIS AND FINDINGS

An examination of the Worker's fixed term contract does not reveal any promise of a possible renewal upon its expiration, hence any claim by the Union that she was terminated on July 4, 2016 is without basis, and in fact she was unemployed on this date, her contract having expired on the previous day. The terms and conditions of her contract were quite explicit and these terms were satisfied by the Employer upon its expiration. The contention by the Union that the recommendation that was made by the Executive Director and subsequently withdrawn amounted to an offer of a new contract of employment is absurd since she had no authority to

offer employment to any worker. Such authority rests with the Honourable Minister.

The Worker's appraisal report was a significant part of the Union's arguments although the contents revealed very poor performance by her and even a concern about her integrity based on her falsification of her attendance records. Surely, the said performance appraisal could hardly have been the basis of an offer of a new contract as alluded to by the Union. The Worker's belated claim that she did not agree with the contents of the appraisal report, if indeed they were of concern to her, could have been ventilated through the grievance procedure. She never exercised this option. In fact, to the contrary the Employer contends that the Worker accepted the contents of her appraisal report on May 27, 2016.

The Employer submitted that it had good and proper reasons as well as legal authority not to offer the Worker another one year contract and that it took into consideration the Worker's poor performance and lack of integrity which did not meet the requirements for the position. We are unable to criticize this decision on the basis of the evidence before us. A plethora of judgments have emanated from this Court on the issue of fixed term contracts of employment that ended with the effluxion of time. Parties appeared to be fully cognizant of many of them since several were cited during the course of their closing addresses which we will not detail at this stage.

The worker's employment contract leaves no room for uncertainty regarding the terms on which she was offered employment and which she accepted. Therefore the Union's contention that the Worker had a legitimate expectation is ill-founded.

With the evidence before us of the Worker's poor performance as reflected in her performance appraisal, which was not challenged, coupled with the expiration of her contract we find no merit in the Union's claim that the termination of the Worker was harsh and oppressive and contrary to good industrial relations practice.

DECISION

Based on the totality of the evidence before us and the aforementioned findings we find no merit in the Union's case. Accordingly this trade dispute is hereby dismissed.

**H.H. Mrs. S. Ramparas
Chairperson**

**H.H. Mr. K. Jack
Member**