



TRINIDAD AND TOBAGO:
ST NO. 18 OF 2007

IN THE INDUSTRIAL COURT

Between

ESTATE POLICE ASSOCIATION - PARTY NO. 1
OF TRINIDAD AND TOBAGO

And

CENTRAL BANK OF - PARTY NO. 2
TRINIDAD AND TOBAGO

CORAM

Her Honour Ms. E.J. Donaldson-Honeywell - Chairman
His Honour Mr. V.E. Ashby - Member
Her Honour Mrs. V. Harrigan - Member

APPEARANCES:

Mr. C. Robertson)
First Vice President) for Party No. 1

Mr. R. Nanga)
Attorney-at-Law) for Party No. 2

DATED JANUARY 14, 2009

REASONS FOR DECISION

Delivered by Her Honour Ms. E.J. Donaldson-Honeywell

The Special Tribunal delivered an oral decision on November 25, 2008 dismissing the dispute filed herein by the Estate Police Association of Trinidad and Tobago [**"the Association"**]. The reasons for the decision were deferred for later delivery and are hereby provided.

The Dispute

On August 9, 2006, the Association reported a dispute concerning the suspension by the Central Bank of Trinidad and Tobago [**"the Employer"**] of Estate Constable Randolph Peters [**"the Constable"**] for thirty [30] days without pay from July 4, 2006 to August 2, 2006.

The circumstances of the suspension are not in dispute. On Monday June 25, 2006 the Constable was assigned to an 11 p.m. to 7 a.m. shift. At 10.45 p.m. he was issued with a firearm and dispatched to a posting at the operations room. This posting is one specifically limited to a two-hour duration, by virtue of the standard operational procedures for the Employer's Security Department. The Constable was also, as stipulated in the procedures governing this posting, responsible for monitoring the CCTV system and reporting any irregularities observed.

The next day, a discovery concerning removal of several items from the Employer's premises was made. A review of video footage revealed that within ten minutes of reporting for duty the Constable "appeared to be in deep slumber." The footage revealed that the Constable failed to observe on the CCTV monitors that at 11.17 p.m., thirty-two minutes after he took up the

post, a man entered the premises of the Employer and left with various items on a trolley.

As a result of these findings the Constable was charged on June 29, 2006. He was instructed to attend a Disciplinary Hearing on June 30, 2006. The charge sheet informed the Constable of the name of the Employer's witness and invited him to provide information on any witnesses he wished to call. He was reminded of his right to be represented. The Constable attended the hearing with his representatives and pleaded guilty to the charges. A plea in mitigation was made by his representative, seeking leniency based on the long hours that the Constable often worked.

On July 3, 2006 the Constable was informed in writing of his suspension based on findings of gross negligence and dereliction of duty. The said letter indicated that the admission of guilt and the Constable's fifteen [15] years service were taken into account before deciding on the suspension. A warning that any occurrence of a similar nature would result in termination of services was issued in the letter.

Subsequently on July 18, 2006 the Association wrote seeking a review of the punishment. The Employer responded advising that it had reviewed the facts as requested but found no basis to rescind the suspension.

The Association's report was then made to the Honourable Minister and the dispute was referred by him to the Special Tribunal on September 19, 2007.

Following fulfilment of all pre-trial case management requirements the hearing took place on November 25, 2008.

The Association's written statement of Evidence and Arguments filed on February 11, 2008 set out the grounds for challenging the Constable's suspension. It was made clear that neither the charge nor the disciplinary process leading to a finding of guilt was contested.

The Association's claim was that the punishment of one [1] month suspension without pay was excessive, harsh and oppressive in that it left the Constable without the means to pay his mortgage and provide for his family. The Association suggested alternative sanctions that would be less oppressive including:-

- One month's suspension at half pay.
- A direction that the Constable pay to replace the missing items by salary deductions over a period of time.

The Tribunal was asked to direct a reduction in the Constable's punishment. The Employer, by written Evidence and Arguments, contended that the suspension was neither harsh nor oppressive and urged the Tribunal to rule accordingly.

The Evidence

The Association's sole witness was the Constable. In his testimony a new aspect of the Association's case was introduced. It concerned the punishment given to other Estate Constables in similar circumstances. An

objection by Counsel for the Employer to this new evidence was overruled. The Tribunal decided to allow further development of the line of questioning on comparative treatment.

On conclusion of the Constable's testimony it was established that there was only one instance of dissimilar punishment for a similar offence being alleged. It related to the same incident that took place on June 25th, 2006. Another Estate Constable, one Mr. Narcis who was on duty that night, was also suspended without pay, but only for twenty-one [21] days. Under cross-examination, the constable admitted that he was aware that the other officer was working a double-shift that night.

Another focus in the constable's testimony was on the hardship he faced as a result of not being paid for one month. He said this caused him to incur debts which remained unpaid.

The Constable also spoke of difficulties in monitoring the CCTV system and raised the issue of a lack of training. Ultimately, under cross-examination, it was established that the monitoring was manageable. The constable had not raised difficulties with the CCTV system or lack of training as extenuating circumstances when given an opportunity to be heard at the Employer's internal hearing. Instead he admitted that at that hearing he accepted that he was "found to be in so relaxed a mode" that night "as to appear to be sleeping thus adversely affecting [... his ...] ability to effectively perform [... his ...] duties contrary to standard operational procedures."

No witnesses were called by the Employer.

Closing Addresses

The Association's closing arguments largely reiterated suggestions for reduced sanction made in their written statement of Evidence and Arguments. Additionally, a position on comparative punishment was put forward. It was argued that the Constable's punishment should have been "at least along the same line" as the other officer who was suspended for twenty-one [21] days without pay as that of the other officer.

The suggestion that the Employer should have considered having the Constable repay the cost of the missing items instead of being suspended was not pursued in view of the lack of evidence on whether this would have caused a lesser or greater financial loss to the Constable.

The Employer's closing address responded to the new comparative punishment argument by underscoring that it was raised as an afterthought allowing limited opportunity for the Employer to bring evidence on the issue. On the limited information available however, it was pointed out that the other officer's double shift would have been an extenuating circumstance justifying the difference in punishment.

It was submitted that the Constable's one-month suspension was reasonable in circumstances of a precepted Estate Constable armed with a firearm, failing within ten minutes of being posted to act responsibly and thereby failing to protect the Employer's interests in the face of a serious security breach. The

Employer contended, in any event, that in industrial relations practice it is not so much the punishment as the procedure that led to it that characterizes disciplinary action as harsh or oppressive. In this case there is no allegation that the procedure was flawed.

Guiding Principles

The principles of relevance to the Tribunal in determining whether a reduction of the sanction of suspension should be ordered have been applied in a number of the Court's decisions. In ESD No. 11 of 1996 OWTU & T&TEC delivered on February 12, 1998 His Honour Mr. Cecil Bernard then Chairman ESD discussed factors to be considered, including the issue of similar sanctions for similar offences. The Tribunal reiterates the principles which were stated as follows:

"We come to the question of the disciplinary punishment imposed on the Worker. In Selwyn's Law of Employment 2nd ed. London, Butterworths, 1978 page 155 the learned author states:

The exercise of disciplinary powers is a corrective function, not punitive. The object is to improve an employee's performance, so that he can remain a valued and useful employee, not to give vent to management frustrations. The choice of the disciplinary sanction must therefore reflect this objective, and should, so far as is possible, be tailored to the individual case, bearing in mind the need to show some form of consistency in like cases...

We recognize as a general principle that the Court should not interfere with the proper exercise of an employer's right to punish an employee who is guilty of misconduct or to determine the quantum of such punishment. However there may be cases

where the decision of the employer is so inappropriate or where the punishment is so disproportionate to the offence that the Court has no alternative but to set aside the employer's decision or to substitute its own punishment for that of the employer. This should happen only in exceptional cases where the decision to punish or the punishment itself is determined on the application of wrong principles."

Findings

It was the finding of the Tribunal, having duly considered the evidence and submissions in this dispute, that there was no evidence of exceptional circumstances such that the Tribunal should interfere with the exercise of the Employer's disciplinary powers.

The unchallenged evidence indicates that the Employer adhered to the principles of good industrial relations practice in all aspects of its disciplinary procedures. Relevant factors, not limited to the nature of the offence, but including the Constable's length of service were considered by the Employer before deciding on a sanction. There was no express evidence on whether financial hardship to the Constable was considered, however the sanction of suspension without pay is one which by its nature contemplates punishment by imposing financial constraints.

The reasons for imposing the sanction were fully explained to the Constable in writing. In particular the Employer underscored that the Constable's "gross negligence" exposed the Employer "to security breaches which could have culminated in grave consequences." The Tribunal accepts this assessment of the seriousness of the disciplinary breach. It is in the interest of the

community as a whole that Constables entrusted with security in relation to the Central Bank of Trinidad and Tobago should be alert so as to ensure that it is as virtually impenetrable as Fort Knox.

In this context the sanction imposed was accepted by the Tribunal as not merely punitive but as corrective, while retaining the services of a long standing employee. The Tribunal further holds that there was no evidence to establish that the cases of the Constable and the other officer Constable Narcis were "like cases", such that their punishment should be consistent. On the contrary it was established under cross-examination that whereas the Constable, after only ten minutes on duty, was in a relaxed mode appearing to be sleeping, the other officer had done a double shift.

The Constable admitted that other circumstances such as lack of CCTV training were not raised with the Employer before or during the disciplinary proceedings as mitigating factors. It would therefore have been inappropriate for the Tribunal to take such circumstances into account.

Decision

Having regard to equity, good conscience, the principles of good industrial relations practice the interests of the persons immediately concerned and of the community as a whole, the Tribunal considered it fair and just that this dispute be dismissed. It was so ordered.

E.J. Donaldson-Honeywell
Chairman

V.E. Ashby
Member

V. Harrigin
Member