



Administrative
SECRET

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TRINIDAD AND TOBAGO:
SPECIAL TRIBUNAL NO. 27 OF 2005

IN THE INDUSTRIAL COURT

Between

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

And

**TRINIDAD AND TOBAGO - PARTY NO. 2
ELECTRICITY COMMISSION**

CORAM:

Her Honour Ms. E.J. Donaldson-Honeywell - Chairman
Her Honour Mrs. J. Rajkumar-Gualbance - Member
Her Honour Mrs. V. Harrigin - Member

APPEARANCES:

Mr. Ronald Simon)
Attorney-at-Law)
and) for Party No. 1
Mr. Curtis Robertson)
First Vice President)

Mr. Andre Des Vignes)
and) for Party No. 2
Mr. Anand Singh)
Attorneys-at-Law)

DATED FEBRUARY 18, 2009

REASONS FOR DECISION

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

The Special Tribunal delivered an oral decision on January 13, 2009 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:

The employment of Estate Corporal Martin Clarke [**"the Constable"**] was terminated by the Trinidad and Tobago Electricity Commission [**"the Employer"**] on September 16, 2004. The Employer's basis for applying the severest disciplinary sanction was that on June 1, 2004, while in charge of the 10:00pm to 6:00am night shift at Distribution East, Arima, the Constable left his post without reasonable cause or authorization.

The Employer's information was that the occasion for the Constable's departure that night was a visit to the Trincity home of a co-worker, at a time when her common-law husband, another co-worker, was on a night shift in San Fernando. The common-law husband left his shift early, due to illness, and returned home to find the Constable visiting. Many unfortunate consequences affecting the Constable's co-workers and their two (2) year old daughter followed. The incident also became fodder for the rumour mill at the office, including a written anonymous account.

The Employer's finding was that the Constable displayed wanton disregard for his duties in that his shift was left unsupervised.

The Association reported the matter of the Constable's dismissal to the Honourable Minister of Labour and Small and Micro Enterprises on November 3, 2004. The dispute was subsequently referred to the Special Tribunal.

In a written statement of Evidence and Arguments filed herein on February 7, 2006 the Association stated grounds for contending that the dismissal was "in breach of the principles of natural justice and harsh, oppressive and contrary to good industrial relations practices." The Association sought reinstatement of the Constable to his position as an Employee with the Employer.

THE ISSUE:

The Tribunal duly considered the issues arising from the Association's stated grounds. These issues are summarised as follows:-

- i. Whether the Constable was summoned to a meeting without prior notice on September 3, 2004 and whether the Employer unlawfully, wrongfully and not in keeping with good industrial relations tried to convert the said meeting to a disciplinary hearing.
- ii. Whether the said meeting contravened Clause 31 of the registered Agreement between the Parties and the Supplemental Police Regulations Chapter 15:02 ["SPR"] and whether therefore the dismissal pursuant to the meeting was wrongful and unlawful.
- iii. Whether the Commission in applying common law practices to the disciplinary action against the Constable was seeking by policy to override the registered Agreement and the statute.
- iv. Whether there was a failure by the Commission to apply principles of Natural Justice, in particular by
 - not giving the Constable the opportunity to confront his accusers;

- not giving adequate notice of the disciplinary meeting to allow the Constable to seek proper representation and prepare his defence.

THE REGISTERED AGREEMENT

Clause 31 states:

- i. "Disciplinary action will be conducted in accordance with the Supplemental Police Regulations in the Tribunal Gazette Notice No. 74 of 1951 or any other amendments hereto. Estate Policemen/Policewomen who are suspended pending investigations shall be paid half pay until the determination of the matter".

SPR Regulation 13 provides:

"Every member of the Supplemental Police charged with any of the following offences:

- (a) insubordination;
- (b) wilful disobedience of lawful orders;
- (c) drunkenness;
- (d) absence from duty without leave;
- (e) sleeping on duty;
- (f) any act, conduct, disorder, or neglect to the prejudice of good order or discipline or any other misconduct as a member of the Supplemental Police,

is liable-

- (g) on conviction before the Commissioner to one or more of the following punishments:
 - (i) fine not exceeding five dollars;
 - (ii) reduction in rank;
 - (iii) dismissal; or
- (h) if a member of the Rural Police on conviction before a police officer in charge of the division or district to one or more of the following punishments:
 - (i) fine not exceeding five dollars;
 - (ii) reprimand or severe reprimand; or
- (i) if a member of the Estate Police on conviction before the police officer in charge of the division or district or before any senior police officer of the

Estate Police, to one or more of the following punishments:

- (i) confinement to barracks for any number of days not exceeding twenty;
- (ii) punishment drill not exceeding fourteen days or up to six hours extra duty without pay but not exceeding one extra hour a day;
- (iii) fine not exceeding five dollars;
- (iv) reprimand or severe reprimand.

However in any such case under paragraph (h) and (i) there shall be a right of appeal to the Commissioner of Police against any such punishment which shall not be carried into effect until the determination of the appeal."

THE EVIDENCE

The sole witness for the Association was the Constable. He confirmed that he was responsible for the supervision of three (3) officers on the 10:00pm to 6:00am shift on June 1, 2004. The three (3) officers were Estate Constable Rojas who was on sentry duty and Estate Constables Hospedales and Alexander who were on patrol duties. The Constable further explained that he was required to ensure that the Employer's property at the location was secure until relief at 6:00am.

In response to the allegation that he left his post that night, the Constable's testimony in Court was a denial that he ever left his post that night. Evidence was admitted through him however, of his written report dated August 16, 2004 that he could not recall abandoning his post as was alleged.

The Constable testified that after completing his duty on June 1, 2004 he had no further official duties as he proceeded on Vacation Leave. He said June 1st, was his last day. On his return to work on July 29, 2004 he was informed

by senior security officers that an anonymous document was in circulation concerning his actions on June 1, 2004. He was informed that he would be required to submit a report.

On the following day, having been asked to bring his pocket diary, he met with Sergeant Wayne John, his immediate supervisor as well as Inspectors Sandy and Gopaul. He was asked to sit and write his report but while doing so he complained of feeling unwell and experiencing dizziness and needed to visit the doctor.

He proceeded on five days sick leave and returned to work on August 7, 2004. He did not then submit the report. At a meeting in Inspector Gopaul's office on August 13, 2004 he was reminded in the presence of his representative from the Association, Corporal Webber, of the need to submit a report. Eventually, on August 16, 2004 the report was submitted.

The Constable said that he was aware that an investigation was in progress. He was subsequently summoned to a meeting at the office of Mrs. Grace Maharaj. He acknowledged that Mrs. Maharaj was in charge of security.

At the meeting, objections were raised, he said, about short notice. The letter informing him of the scheduled meeting on September 3, 2004 was dated September 2, 2004. Further objections were raised that the correct disciplinary procedure under the Collective Agreement was not being followed. The Constable was accompanied by representatives from the

Association at the meeting including Estate Corporal Webber and Attorney Ronald Simon.

The Constable further volunteered that prior to the June 1, 2004 incident he had been suspended in relation to another disciplinary breach. It was based on this experience that he felt that the Employer's proceedings on September 3, 2004 were unlawful. He expected that a Tribunal would have been set up, chaired by the Chief Security Officer or a First Division officer appointed by the Commissioner of Police.

Under cross-examination, the Constable admitted that as early as July 30, 2004 he appreciated the seriousness of the investigation and that he could face serious consequences if there were evidence that he abandoned his post. He also knew that the allegation was not just that he left his post but that he visited his co-worker's home. He said he knew both of the co-workers and that they lived together. The Constable volunteered that the female co-worker lived in Trincity, some fifteen (15) minutes drive from his Arima post. When asked how he knew he said, "Because we spoke. We were friends."

The Constable, when asked, agreed that a statement from the female co-worker, that he was not at her house, would contradict any claim that he was there. He said he made no attempt to bring her as a witness in his defence.

He also said he did not attempt to have the Sentry that night, Constable Rojas testify on his behalf. All three of his subordinates on duty that night had

submitted, to the Employer, written reports where they each said they could not recall that the Constable left his post that night.

On being questioned about the correct procedure to be used for an officer leaving his post, the Constable said permission from a Senior officer was required. Even in an emergency situation, where this could not be arranged, the most senior officer remaining must be put in charge and the security informed so that a record of the departure can be made.

The Constable was aware of the written statement to the Employer provided by his male co-worker, that he, (the male co-worker) returned from work earlier than expected on June 1, 2004 and saw the Constable at his home. He said that this co-worker was lying because he was "just malicious." Later in his testimony he expressed the opinion that this co-worker was jealous and therefore decided to base his written statement on the anonymous letter that was circulating.

Counsel for the Employer, put to the Constable that his position was like a Calypsonian, "everything we say is a lie. I wasn't there?" to which he agreed.

The Constable in response to questions about the September 3, 2004 disciplinary meeting said that at the meeting the Employer did not get into any details about his co-workers' statements that he was at their house because he and his representatives said "if they were going to go to details of the matter [...they...] wanted to do it in the proper way, which is accustomed to be

done." They then got up and left since the Employer did not accept that the procedure was incorrect.

He confirmed that no evidence was presented at the meeting that was challenged. He said that Mrs. Maharaj had made it clear that she was giving him an opportunity to be heard. He did not, however, "run his defense" then because "until I get a charge under the Regulations, I have nothing to say." He reiterated, "It is what I'm used to."

The Employer called five witnesses in support of its case. The first witness was the male co-worker of the Constable who testified that he in fact found him at his home at 2:00am on the night of June 1, 2004. He gave evidence on the many unpleasant events that unfolded that night with consequences for all concerned.

The Employer's witness said that on the morning after the incident he did not volunteer a report to the Employer on the matter. He only told his best friend and his supervisor who gave him some days off on sick leave.

Later on, he became aware of the anonymous document circulating but knew nothing of its origins.

The said document was entered into evidence. It was not read aloud as submitted by Counsel, it "will speak for itself. There is no need to indulge in scandalising material."

The witness denied that he gave the statement to Inspector Sandy to repeat what was in the anonymous document. He said he was approached by the Inspector and asked to give a statement on the incident.

The Employer called three (3) Senior Security Officers as witnesses, namely Inspector Clyde Gopaul, Inspector Martin Sandy and Sergeant Wayne John.

The three officers gave consistent accounts corroborating each other on the investigative and disciplinary proceedings arising from the June 1, 2004 meeting.

The oral testimony of the three (3) witnesses in fact reiterated the reports made during the progress of the investigations which were as follows:-

"Thursday 5th August, 2004

To : 2500 [... Mrs. Maharaj...]
 From : Inspector Martin Salandy
 Subject : **Interim Report – Allegation of Martin Clarke Est. Corporal No. 2929 abandoned post on 10/6 shift of 1st June 2004**

On Wednesday 9th June 2004 I received information, which alleged that during the course of the 10/6 am shift of Tuesday 1st June 2004, Martin Clarke Est. Corporal No. 2929 abandoned his post. Also the officer was on annual leave from 7th June 2004 to 27th June 2004.

From information obtained I interviewed Ms. Draughtsman at T&TEC Distribution East on Thursday 17th June 2004, in the presence and hearing of Wayne John Est. Sergeant No. 2781. She asserted that Corporal Clarke was at her residence during the subject period. On Monday 21st June 2004 I again reinterviewed Ms. at the Sergeant Office, Distribution East, she asserted that the matter was her private

business she started to give a written statement and then declined.

On Friday 18th June 2004 and Wednesday 23rd June 2004 I interviewed Mr. cohabits at residence at No. Avenue, Trincity with Ms. On Tuesday 29th June I again interviewed Mr. who wrote his statement. It asserted that between 2.30 am and 3.00 am he met Corporal Clarke at his residence.

On Saturday 19th June 2004 I interviewed and recorded statements from Gabriel Hospedales Est., Constable No. 2861 and Kenneth Alexander Est. Constable No. 14442 who were on patrol duty during the subject shift. They could not recall that Corporal Clarke was absent from the compound.

The Station Sentry/Recording officer, Anthony Rojas Est. Constable 2992 was interviewed on Thursday 1st July 2004. He did not make any record that Cpl. Clarke left the facility and he asserted that he could not recall that the officer left the compound. His report is attached.

On Thursday 29th July 2004 Corporal Clarke resumed duty from annual leave. At the Arima Service Centre I interviewed him in the presence and hearing of Inspector Gopaul and Sergeant John. I informed him of the allegation of the abandonment of his post and that a report is needed with respect to his activities during the subject shift. He stated he did not have the relevant pocket diary on his person. I instructed him to get the pocket diary and I will return the following day for the report.

On Friday 30th July 2004 at the Arima Service Centre, in the presence and hearing of Inspector Gopaul and myself, Wayne John Sgt. No. 2781 instructed Cpl Clarke to write the report. About ten minutes later Cpl. Clarke reported that he was feeling ill. He was taken to his personal physician Dr. Boodoosingh by Inspector Gopaul and was granted five days sick leave to Tuesday 3rd August 2004.

On Wednesday 4th August 2004 I visited Distribution Arima, Cpl Clarke reported sick leave.

During the course of investigation I visited the Arouca and Malabar Police Stations. I obtained information that an intervention was made at the residence of and on domestic matters. There was no reference to Cpl. Clarke.

I have retained the relevant Station Diary and SDO attendance register. There was no record that Cpl. Carke left the Compound during the shift.

**/Sgd:/ Martin Sandy
Inspector South."**

"To : C.S.O.
ufs Insp. North
From : No. 2781 E/Sgt W. John
Date : Monday 16th August 2004
Subject : **Report on Rumours circulating the Compound**

Sir,

On Friday 4th June 2004 whilst on duty at T&TEC Distribution East, Arima, my attention was drawn to rumours that were circulating in the compound. It had to do with an alleged incident involving one of the Security Officers at T&TEC Arima viz; # 2929 Estate Corporal Martin Clarke. It was rumoured that an altercation took place between Corporal Clarke and another employee at the employee's home.

On Tuesday 8th June 2004, I received further information concerning the rumours. As a result, I informed Inspector North of the information about the alleged incident. I then visited the Malabar and Arouca Police Stations as a result of the information I had received. No relevant information was received concerning the alleged incident.

Subsequently, Inspector Sandy visited the Arima Police Booth where he interviewed Miss in my presence. Inspector Sandy spoke with her because of the rumour, that an altercation had taken place at her home. She confirmed that Corporal Clarke was at her home on the night of 31st May 2004. When asked what time he (Cpl. Clarke) was at her home she said "around 2.00am-11.00pm, I'm not sure what time", when Inspector Sandy asked her if it was around the time when there's comedy shows on television, she indicated it was not so early. Inspector Sandy then asked her if she was willing to give a statement in writing and she refused.

No. 2929 Estate Corporal Martin Clarke was not interviewed on the allegations, due to the fact that he had proceeded on annual leave from the 7th June 2004 to 27th July 2004. This leave was applied for since April 2004 with the intention of leaving the country for his vacation.

On his return to work re annual leave, Corporal Clarke was asked to submit a report on his tour of duty on the 10.00 pm to 6.00 am shift on June 1st 2004. Before completion of the report, Corporal Clarke reported ill and had to be taken to seek medical attention, where he was granted five (5) days sick leave. On his resumption for duty he subsequently submitted his report.

Enquiries are still continuing into this alleged incident.

/Sgd:/ Wayne John
E/Sgt. #2781
S.D.O. i/c
2004.08.16"

"To : 2500
 From : Martin Sandy Inspector
 Subject : **Abandonment Of Job by #2929 Estate Corporal Martin Clarke on Tuesday 1st June 2004.**

On Friday 4th June 2004, my attention was drawn to rumors that No. 2929 Estate Corporal Martin Clarke was involved in an incident off the job. Based on these rumors and further information I received on Wednesday 9th June 2004, I initiated an investigation.

Investigations revealed that No. 2929 Estate Corporal Martin Clarke while on duty on the 10.00 pm to 6.00 am shift on Tuesday 1st June 2004 he abandoned his post. Corporal Clarke then proceeded on Annual Leave from Monday 7th June 2004 to Tuesday 27th July 2004.

From information obtained and in the presence of No. 2781 Estate-Sergeant Wayne John, on Thursday 17th June 2004, I interviewed Ms an employee of Distribution East who indicated that Corporal Martin Clarke was at her residence during the time in question. She refused to give a written statement.

I further interviewed Ms on Monday 21st June 2004; she refused again to give a written statement and said it was her private business.

Statements were obtained from the following:

- o Telecom Operator Distribution South who indicated that on Tuesday 1st June 2004, at about 2.30 am he went to his residence at Trincity and when he arrived he met Corporal Martin Clarke. He also

indicated that Corporal Clarke left at about 3.00am (See Statement attached.)

- o No. 2861 Estate Constable Gabriel Hospedales
- o No. 2992 Estate Constable Anthony Rojas
- o No. 14442 Estate Constable Kenneth Alexander.

They all indicated that they cannot recall Corporal Clarke leaving the Distribution Compound during the time in question (See statements attached.)

- o Inspector Clyde Gopaul

On Friday 13th August 2004, at the office of Inspector North, Head Office, I interviewed No. 2929 Estate Corporal Martin Clarke in the presence of Clyde Gopaul Inspector North and No. 2914 Estate Corporal David Webber who was acting in the capacity of Corporal Clarke's Estate Police Association Representative. Cpl. Clarke was informed of the allegation made and statement which I obtained he replied that he cannot recall that he abandoned his post. A report was requested from Corporal Martin Clarke. (See report attached).

Based on the interview of Ms and the statement of, I conclude the following:

1. There is clear and convincing evidence that No. 2929 Estate Corporal Martin Clarke did abandon (sic) his post while on duty on the 10.00 pm to 6.00 am shift on Tuesday 1st June 2004.
2. No. 2992 Estate Constable Anthony Rojas was negligent when he failed to record the departure of Cpl. Clarke out the Distribution East Compound and the return to the Distribution East compound.

The following have been retained for your perusal:

1. Station Diary extract from distribution South for period 12.25 am to 12.27 am on Tuesday 1st June 2004.
2. Station Diary from Distribution East for period Tuesday 1st June 2004.

3. SDOs attendance register for period Tuesday 1st June 2004.

Forwarded for your attention

**/Sgd:/ Martin Sandy
Inspector South"**

Additionally, Inspector Gopaul testified that he went to the Arouca Police Station and was informed that the Constable's two co-workers' resident at the home where the incident took place made reports at the station. A signed extract from the Station Diary confirming this was produced and entered into evidence. The relevant part of the Extract states that the female co-worker **"arrived at station and reported that around 3.00 am this morning she had a visitor and her common law husband came home and met him there. Because of this altercation ensued and her friend left"**.

The three (3) officers also expressed knowledge of the fact that there were two (2) disciplinary regimes governing Estate Constables employed by the Commission – one involving charges under the SPR and the other by application of what they knew as "Common Law" principles.

The other witness called by the employer was Mrs. Grace Maharaj, Corporate Secretary and Head of the Security Department. She first became aware of the June 1, 2004 incident when she got a report from Distribution East Area Manager, Ernest Boxhill. He also showed her the circulating anonymous document.

As a result Mrs. Maharaj instructed Inspector Sandy to conduct the investigation which generated the reports hereinabove detailed. Mrs. Maharaj testified that on review of the reports she made findings that the Constable had abandoned his shift and was in dereliction of duty. She therefore determined that disciplinary action should be taken.

Mrs. Maharaj set the disciplinary proceedings in train by instructing Inspector Gopaul to write to the Constable informing him of the breach and to schedule a meeting. This was done and the Constable was invited to attend with an Association representative if he so required.

At the hearing on September 3, 2004, Mrs. Maharaj informed the Constable and his Association representatives, Corporal Webber and Mr. Ronald Simon, Attorney-at-Law, that the meeting concerned the report, investigation and findings of breach against the Constable.

She disclosed that she had statements from various persons in a file in her possession. She did not reach the point of identifying the documents because two objections were raised by the Association. The first was a challenge to her authority, as a non-precepted person, to chair the proceedings and the second was that the matter should have been dealt with under the SPR.

Mrs. Maharaj said she then explained that in her position as Head of the Security Department she was representing the Employer. She added that no charge was laid against Mr. Clarke under the SPR and given the nature of the

breach the action was taken by virtue of Section 19 (2) of the Supplemental Police Act Chapter 15:02.

Section 19 (2) provides that:-

"The employer of any estate constable may at any time dispense with the services of the constable."

Despite this explanation Mrs. Maharaj said, the Association maintained its position and on Corporal Webber's encouragement, the Constable and his representatives walked out. She said she cautioned Corporal Webber while this was happening that he was denying the employee the right to be heard. She said:-

"I did point out to Corporal Webber that he was doing an injustice to the employee. I indicated to him when he argued about the procedure that I was adopting, I indicated to him that I have observed – or the Commission has observed the principles of natural justice and good industrial relations practice. A report was made with respect to the action of a Corporal. A thorough investigation was carried out. The officer was informed in writing of the breach he had committed. He was given the opportunity to have representation through the Estate Police Association. He was invited to the meeting, and he was given also the right to be heard.

So the Commission had complied with the rules of natural justice, and I was willing, at all times, to share the information I had on the file with Corporal Webber. I told him he was doing the employee an injustice by denying him that right to be heard."

After the walk-out Mrs. Maharaj consulted with her seniors and a determination to terminate the Constable's services was made. She then signed the September 16, 2004 dismissal letter.

Thereafter on November 2004, disciplinary proceedings against the Sentry on duty the night of the incident concluded with a warning letter dated November 8, 2004.

Under Cross-Examination, Mrs. Maharaj explained how she reconciled her position on applicability of Section 19 (2) proceedings against the Constable with clause 31 of the registered collective Agreement. She stated that:-

"A Clause 31 refers to disciplinary action being conducted in accordance with the Supplemental Police Regulations. Those regulations are not exclusive to the Supplemental Police Act.

Section 19 (2) of the Supplemental Police Act confers the right on the employer to dispense with the services of an employee.

Q Yes?

A When I looked at the – after the investigation was completed, when I looked at the breach committed by Corporal Clarke, basically, he left the Commission's compound unattended without authorization. I looked at the breach that he committed. It did not seem right to proceed or lay any charge under the Supplemental Police Act as referred to ..."

Mrs. Maharaj further explained that the breach in this case entailed more than the regimental matters contemplated by SPR Regulation 13.

"He was absent without authorization. He left the compound without any authorization. He left his shift unattended. He left his subordinates who he was supervising without any direction. He was the corporal in charge of the ten to six shift – this is the night shift. He was the most senior security personnel on the compound. He had three other officers with him that night. He basically left them and went off on a frolic of his own."

Finally, she stated that the clear meaning of Clause 31 is that the SPR provisions apply only when a charge under the SPR is brought. In other

cases the Employer's disciplinary proceedings fall under Section 19 (2) of the Supplemental Police Act and are governed by the principles of good industrial relations practice. She disagreed with Counsel for the Association that there was any need for such procedures to be documented or for a notice to be sent to Estate Constables stating that the said principles would be applied.

GUIDING PRINCIPLES:

A. The Walk-Out

In one of the Court's earliest Judgments **Trade Dispute No. 48 of 1966 TIWU and Associated Battery and Metal Industries (Trinidad) Limited** delivered on August 23, 1966, it was explained that:-

"a worker who refuses to say anything in answer to a charge of misconduct made against him puts an employer in an impossible position and leaves him with no alternative but to take disciplinary action against the worker."

The Court has reiterated this point in a number of cases where workers who refused the opportunity given by the employer to be heard in disciplinary proceedings, challenged the termination of their employment. However, the practice of "walking out" on the employer in the midst of a scenario where an opportunity to be heard is being given persists.

In **ESD No. 12 of 2002 Managers and Supervisors Association of Trinidad and Tobago and Airports Authority of Trinidad and Tobago** delivered on July 30, 2004, His Honour Mr. Gregory Baker issued a strong reminder at page 17 that:-

"The emphasis placed by the Court on the right to be heard does not put the employer under an obligation to await the pleasure of a worker or his advisers.

In this Court's view what procedures the worker had come to expect would be followed and what he may have been advised does not relieve him of the obligation to treat with his employer's requests and instructions according to their tenor, whatever reservations he may wish to communicate to the employer upon his attendance."

In the instant case the Constable and his representatives walked out without taking advantage of the Employer's offer of an opportunity to be heard. Thereafter, before the Tribunal, the Constable gave evidence on his defence – in essence that he was not at his co-workers' home and never left his post.

The Tribunal reiterates, however, as stated by His Honour Mr. C. Bernard in **ESD No. 26 of 1998 OWTU and Trinidad and Tobago Electricity Commission** [Page 6] delivered on March 6, 2006 that:-

" it is not to the Court but to the employer that the worker owes an explanation and, in general, regardless of how plausible the explanation to the Court might be, if the worker withheld it from the employer without cogent reasons for doing so, he/she runs the risk of the employer's findings of guilt being upheld."

B. The Two-Fold Regime

Counsel for both parties cited the Tribunal's decision in **ST No. 21 of 2005 EPA and T&TEC** delivered on August 3, 2006 for the Tribunal's consideration.

The Tribunal then explained at page 11, the proper application of Clause 31 of the Registered Agreement as follows:-

“Clause 31 states that disciplinary action “will be conducted in accordance with the Supplemental Police Regulations.” The Supplemental Police Regulations only provide however at Regulation 13 for the procedure to be applied when an Estate Constable is charged with certain listed offences. In this case Mr. Butkoon was not charged with any of those offences. It is only in the specified instances that under Regulation 13 the process whereby a Constable can be convicted must be “before the Commissioner of Police.”

C. The “non-exclusivity” of subsidiary legislation

In her testimony Mrs. Grace Maharaj underscored what she characterized as the “non-exclusivity” of subsidiary legislation in relating how she reconciled Clause 31 of the Registered Agreement with her application of Section 19 (2) of the Supplemental Police Act. This characterization is in fact borne out by the legislation itself.

The Supplemental Police Regulations referred to in Clause 31 are expressly made under Section 12 of the Supplemental Police Act. The Regulations are in fact made by the Minister by virtue of authority delegated to him by Parliament.

There are many titles used to describe delegated legislation; however, the title subordinate legislation is particularly useful.¹ This title serves as a reminder that subordinate legislation is not a ‘stand alone’ statute. It must be construed in light of the Parent Act.

¹ Legislative Drafting by G.C. Thornton, Butterworths, 1970 edn at pg. 314
Bennion on Statutory Interpretation, Lexis Nexis, 5th edn at pg. 244

Accordingly, where in this case Clause 31 provides for disciplinary action to be conducted in accordance with the SPR, the SPR must be read with Section 19 (2) of the Supplemental Police Act.

D. The Right to Confront Accusers

Counsel for the Employer cited the useful guidance on the obligations of an employer towards a worker against whom an allegation of misconduct has been made by a third party to be found in the above cited **ESD No.12 of 2002 MASATT and Airports Authority of Trinidad and Tobago.**

The Court then emphasized that:-

".... while an employer is required to afford a worker an opportunity to be heard before disciplining him, he is not required to hold a mini-trial with all the paraphernalia, formalities and strictures of a Court of Law as regards for example, the framing of charges, questioning, sources of information, evidence and discovery. Despite the fact that penalties may result from such a hearing, an employer is certainly not to be held to the exacting standard of the Criminal Law. Lest this statement be misunderstood, it is not to be taken as authorizing an employer to run a "kangaroo court" and ignore the basic tenets of fairness and natural justice."

More recently in **TD No. 204 of 1999 Tobago Hospital ty Trade Union and Island Investment Limited** delivered on December 18, 2008, His Honour Mr.

C. Bernard, President noted that:-

"While there may be a rule, scrupulously observed in criminal cases, that an accused person has the right to "confront" his or her accuser, if there is anything approaching such a rule in industrial relations cases it is not one which is universally applicable."

FINDINGS

The Tribunal reviewed the evidence as well as submissions on law and principles of good industrial relations practices presented by the parties. Arising there from, findings were made in relation to the issues raised.

Firstly, in relation to the complaint that the Constable was summoned to the September 3, 2004 meeting without prior notice, the Tribunal finds that the Constable was duly notified of the meeting on September 2, 2004. We held further that he was aware of the nature of the meeting as on his own admission he knew since July 30, 2004 that a serious investigation was in progress concerning the June 1, 2004 incident.

He knew that he faced serious disciplinary consequences. Accordingly, the Tribunal does not accept that the Employer unlawfully, wrongfully and not in keeping with good industrial relations tried to convert the meeting to a disciplinary hearing. It was clear to all concerned, from the outset, that it was a disciplinary hearing.

The Tribunal's finding on the issues raised regarding failure by the Employer to comply with Clause 31 of the Registered Agreement and the SPR is that there was no evidence of such contravention. On a clear and literal interpretation of Clause 31, the Clause does not and is not intended to override the Employer's authority to discipline the Estate Constables that it has privately employed. The SPR is subsidiary legislation and must be read with its Parent Act the Supplemental Police Act Chapter 15:02 ["SPA"] which provides at Section 19 (2) for such authority.

We accept further that there is no requirement for the Employer to stipulate in writing in a notice to Estate Constables that principles of good industrial relations practice must be applied by the Employer in disciplining constables by virtue of Section 19 (2) of the Supplemental Police Act.

It was the Tribunal's finding that the meeting held on September 3, 2004 and the dismissal pursuant to those proceedings did not violate Clause 31 of the Agreement.

Thirdly and following from the second finding, the Tribunal held that the Commission applied principles of good industrial relations practices not limited to the common law. In so doing, the Tribunal held that there was no attempt to override Clause 31 of the Agreement or the provisions in the SPR. The Employer's actions were consistent with and contemplated within the said provisions.

The fourth issue on which findings were made concerned alleged breaches of Natural Justice in the Employer's disciplinary process. On the point that the Constable was not given the opportunity to confront his accusers, the Tribunal held that in the unfortunate circumstances of this case, where the said accusers were co-workers who suffered grave personal consequences, it was not necessary to further intrude into their private domestic affairs by having them confronted by the Constable at the hearing. This was not required in view of the copious documented evidence that the Employer was willing to disclose to the Constable and the Association.

In any event, there was no request made at the hearing that the accusers be invited for questioning.

On the point of inadequate notice, the Tribunal found no evidence to support the contention that the Constable had insufficient time to seek proper representation. He was in fact represented from as early as August, 2004 by the Association in all aspects of the investigation and disciplinary proceedings.

He was able to arrange for not only Association Officers but legal Counsel to be present at the meeting. It is also not correct to state that the Constable had no time to prepare a defence. He admitted that together with his representatives he decided not to "run his defence" at the meeting.

Finally, the contention that the Constable and/or his representatives challenged evidence presented at the meeting was contradicted by the testimony of the Constable himself. His oral evidence before this Tribunal was that the Employer was unable to present any evidence at the September 3, 2004 meeting because of the objections raised concerning Clause 31 and the subsequent walk-out. It was the Tribunal's finding that it was not in circumstances where the evidence presented was being challenged that the Constable and the Association refused to participate in the meeting.

In all the circumstances the Tribunal found that the Employer conducted a thorough investigation and had sound evidence that the Constable abandoned his post on June 1, 2004 leaving his subordinates unsupervised.

The eye-witness testimony of his male co-worker was cogent and convincing. On the other hand, the Constable's explanation as to why he felt his co-worker would give a false report that he found him at his home defied logic and lacked credibility in view of the solid chain of evidence to the contrary.

The Employer in coming to a decision on termination also followed principles of good industrial relations practice, by offering even in what may have seemed to be an airtight case, the opportunity for the Constable to be heard.

The Constable's failure to take advantage of this opportunity cost him not only the chance to prove that he "was not there", but perhaps more plausibly, to admit that he had left his post to visit his co-worker and to plead mitigating factors. The strength of the evidence before the Employer was such that the Constable's participation in this way would have been the only avenue to influencing a reduction in the severity of the sanction suffered.

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

J. Rajkumar-Gualbance
Member

V. Harrigin
Member