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TRINIDAD AND TOBAGO:
SPECIAL TRIBUNAL No.31 OF 2008

IN THE INDUSTRIAL COURT

BETWEEN

ESTATE POLICE ASSOCIATION - PARTY NO. 1

AND

NATIONAL MAINTENANCE TRAINING AND
SECURITY COMPANY LIMITED - PARTY NO. 2

CORAM

His Honour Mr. V. Ashby -Chairman
His Honour Mrs. J. Rajkumar-Gualbance -Member
His Honour Mr. L. Achong -Member

APPEARANCES:

Mr. C. Robertson)
1st Vice President) - for Party No. 1

Mr. B. Wilson)
Industrial Relations Consultant) - for Party No. 2

DATED: 24th October, 2011

JUDGMENT

Delivered by His Honour Mr. L. Achong

This dispute between the Estate Police Association (Party No.1) hereinafter called the Association and the National Maintenance Training and Security Company (Party No.2) hereinafter called the Company was referred to the Special Tribunal by the Minister of Labour and Small and Micro Enterprise Development by issue of an Unresolved Certificate dated 2008 September 19, over the ***"termination of services of Estate Constable Sanderson Jack effective June 1, 2005."***

Jack's termination letter is reproduced hereunder:

***"Mr. Sanderson Jack
Security Officer
NORTH EAST REGION***

Dear Sir,

RE: TERMINATION

I refer to a disciplinary hearing held on 18th May 2005 into the following charges laid by Acting Regional Security Supervisor Andy Edwards, arising out of irregularities at the Eric Williams Medical Sciences Complex on the 24th March 2005 on the 18:00 hour to 06:00 hour shift.

1) At approximately 23:50 hours, Security Officer Sanderson Jack abandoned his post at the Priority Care Facility, contrary to Article III Section 5,

2) Between 23:45 hours and 24:00 hours Security Officer Sanderson Jack failed to exercise due care and proper handling of the firearm, serial number BPM 8121, and six (5) rounds of ammunition, issued to him, contrary to Article XI Section 14, of the Company's Security Handbook.

Present at the hearing were Deputy Chief Security Officer North, Kenneth Sylvester and yourself with Deputy Chief Security Officer East, Omar Dubay prosecuting, assisted by Security Officer Gary Clarke, while you were defended by Estate Police Association representatives Curtis Robertson and Randolph Foster, with Andy Edwards and Woman Security Officer Valene Daniel called as witnesses.

You pleaded Not Guilty as charged. In your defense you claimed that at approximately 23:45 hours you began to feel sleepy and you told Woman Security Officer Daniel that you are going for a walk. On the footpath on the eastern side of the building in a poorly lit area you were held up by two (2) armed men who robbed you of your firearm. This you reported to your Supervisor ten (10) minutes after due to the fact that the phones at the back of the building were not working.

You were present when Woman Security Officer Daniel refuted your statement that you informed her that you are feeling sleepy and as a result you were going for a walk. Further, for you to proceed from the well lit lobby to a poorly lit area and fail to exercise due care and attention resulting in the loss of the Company's firearm is not acceptable by the Company.

Management therefore, having reviewed the available evidence has found you guilty as charged and has decided to terminate your services effective WEDNESDAY 1ST JUNE 2005. All monies owed to you will be paid subsequent to the return of all Company issued items.

Yours sincerely "

SIGNED

MICHAEL HUNTE
MANAGER, HUMAN RESOURCES

The Association contended in its arguments that

1. The punishment applied to both charges by the Company is not consistent with the disciplinary code as stated in the Company's security hand book.
2. The Company's decision to terminate the services of Jack based on the disciplinary charges against him was harsh and oppressive and not in keeping with good Industrial relations principles and practices.
3. The Company acted contrary to good Industrial Relations Principles and Practices in terminating Jack.

The Association called one witness, the employee Jack. In his evidence in chief Jack told the tribunal that he was employed with the Company for seven (7) years and was a precepted officer for six (6) of those years. On the date of the incident 2005 March 24, he was on the 6:00p.m to 6:00a.m shift as a General Mobile Patrol Officer. While on such duty he would usually pay special attention to the Priority Care Facility since that is the area of the hospital that deals with emergencies.

On the day in question he left building No.2 of the Medical Complex where he assisted with the locking up of the building and the removal of cash and proceeded to the back of the Priority Care Facility by walking through an aisle, when he was accosted by two armed men, who relieved him of his service revolver and six rounds of ammunition. The bandits had what appeared to be two nine millimeter pistols.

Jack told the Tribunal that the revolver was in a holster under his jacket yet when asked whether the holster was issued by the

Company he then changed his response to that of having the revolver in his pocket since the Company does not issue holsters to them.

Having been relieved of the weapon, Jack said he went through the back entrance of the Priority Care Facility and used the phone there to call one of his Superiors, Sergeant Hall, to report the incident. He also said that prior to leaving the Priority Care Facility he told a female security officer at the Priority Care Facility that he was going on foot patrol so if the patrol vehicle returned for him and he was not present they should be informed that he would be returning soon.

The Association closed its case.

Mr. Wilson for the Company sought to make a no case submission but this was denied by the Tribunal.

In summary, the Employer contended that the Association in its Arguments never denied that the employee was guilty, but rather contended that the penalty was harsh. Mr. Wilson said **"They have accepted guilt from all that they have said. They are simply contending that the punishment was not consistent with the disciplinary code, and they have attached the disciplinary code to their Evidence and Arguments. But they have led no evidence in this court dealing with the disciplinary code. They have not asked the Court to take cognizance of the attachment to support any argument that they may have for which they have not made to this Court concerning the disciplinary code. Apart from accepting that the worker is guilty, they have not raised any evidence to defend the position of the harshness of the punishment"**.

He contended that in those circumstances "the Company had no case to answer or that the Association has established no case for the Company to answer to in this matter".

In his reply, Mr. Robertson contended that he intended to deal with whole matter of the disciplinary code through the Company's witnesses which he was entitled to do, since it formed part of the Association's Evidence and Arguments. It would not have been practical to deal with the Company's disciplinary code and the appropriateness of the punishment for the violations through his witness since these were strictly in the Company's domain.

The Chairman ruled as follows:

"We have considered the motion you (Mr Wilson) have made and we are not satisfied that on what is before us in the written Evidence and Arguments and in the oral testimony led so far, there is sufficient basis for us to determine this matter in favour of the employer without calling upon you, the employer, to make your case." See IRA Chapter 88:01 Section 10 (1) (d).

Under cross-examination by Mr. Wilson Jack insisted that on the night in question he was assigned to General Compound Patrol Duties and not to a fixed post assignment.

Jack further explained that a fixed post assignment means an officer being placed at a particular location and required to remain there, unlike General Compound Patrol where the officer patrols entire areas either on foot patrol, mobile patrol or a combination of both. He further stated that he was never assigned to fixed post duties at the Priority Care Facility that night since there was a

shortage of officers and the Primary Care Facility only has an officer there on a fixed post assignment when there is a full complement of officers on duty. Jack remained adamant that he was on general compound patrol assignment that night.

Strangely, Jack denied under cross-examination that he said in his evidence-in-chief that the bandits had what appeared to be two nine millimeter pistols. He also could not recall where his revolver was kept on his person, whether it was in his pocket, or attached to his belt. He again said that it was not in a holster since the Company provided none.

Having been shown his written statement to the Company on this incident where he said "The man in the red T shirt walk up to me and removed the holster which was fastened on the right side of my waist on my belt" Jack said that "he could not recall if he had a holster that night".

The Tribunal does not find it necessary to further highlight other aspects of Jack's testimony under cross-examination, there being so many inconsistencies between his answers and his statement which was attached to the Association's Statement of Evidence and Arguments.

However, what is of significance is that he admitted being suspended for ten (10) days for a violation of the Company's regulations on firearm offences.

There was no re-examination by Mr. Robertson of the Association.

The Company called one witness Omar Dubay, the Deputy Chief Security Officer with the Company. Dubay had been employed for

thirty-three years in the security profession, eighteen of which were in the Trinidad and Tobago Police Service. He held the rank of Estate Assistant Superintendent of Police at the Company.

In his examination-in-chief Dubai explained what an officer is expected to do when that officer is on a fixed post assignment. He also stated categorically that on the day in question Jack was on a fixed post assignment at the Priority Care Facility and was not authorised to leave the post. Dubai was also of the view that the time lapse between when the revolver was reportedly taken from Jack at 11:45 and when he Jack contacted the office at 12:03 to report same was inordinately long.

Dubai was consistent, both in his evidence-in-chief and under cross-examination that Jack seriously breached rules and procedures by moving away from his location and hence compromising the safety and security of himself and others. Dubai was the person who prosecuted the Company's case at the internal disciplinary hearings.

Having read Jack's statement about the circumstances surrounding the larceny of his weapon, Dubai said he was of the opinion that Jack's statement was fabricated and that the bandits were familiar with Jack.

Under cross-examination Dubai dealt extensively with questions as to why the specific charges were laid and the reason for the punishment.

In his closing address, Mr. Robertson based his case upon four(4) points namely:

1. Was Jack on General Mobile Patrol or in a fixed post/position?
2. Did he abandon the fixed post?
3. Was the loss of his firearm questionable as it related to his response in the face of the incident?
4. Was the punishment consistent with the provisions of the Company's rules and regulations?

In Mr. Wilson's closing address he maintained the same position that he had taken in his motion on the no case submission.

SUMMARY

The undisputed facts of the case are as follows:

1. Jack was on duty (6:00pm-6:00am shift) on 2005 March 24, at the compound of the Priority Care Facility of the Eric Williams Medical Complex.
2. He was relieved of his service revolver and six (6) rounds of ammunition sometime before 12:03 am 2005 March 25.
3. Jack's evidence in chief was filled with contradictions and it was also at variance with his written report on the incident.
4. The Company initiated an investigation of the incident on 2005 April 8 and referred the matter to an Internal Tribunal on 2005 May 18.
5. The Company dismissed Jack effective 2005 June 1.

The Tribunal could find little difficulty in arriving at the conclusion that Jack was not a witness of truth and therefore accepts the Company's internal Tribunal's findings that he was guilty of the charges laid against him save and except that he may have been traumatized to the extent that he genuinely could not remember certain things.

Before examining whether the Company acted in a manner not in accordance with principles of good industrial practice and whether the penalty that was applied, i.e. dismissal, was too severe, it may be of assistance to set out the parameters within which this Tribunal must confine its deliberations and these are:

1. Was the robbery a genuine one or was Jack an accomplice?
2. Did the incident so traumatize Jack that the variations between his written statement and his evidence-in-chief is understandable?
3. Was Jack on a fixed post assignment or on General Mobile Patrol?
4. Was the time lapse between the incident and the subsequent reporting a reasonable or unreasonable one?

While the question pertaining to item 1 above did not arise anywhere in the documents before us we cannot overlook or dismiss the view of Dubay, an experienced security professional. However, after carefully scrutinizing the verbatim Court Notes and all other documentation, the Tribunal could not allow Dubay's view to prevail upon it. Capable as he was of testifying on standard

procedures he had no first-hand knowledge of the events occurring on the night in question.

With regard to Item 2 above, it would have been reasonable for the Tribunal to conclude that his written statement on the incident could be partially different to his evidence in chief because at the time of writing that statement, he may have still been affected by what could have been a very traumatic experience.

What the Tribunal cannot accept was that he repeatedly contradicted himself in both his evidence-in-chief and under cross-examination.

Item 3 above was probably the easiest to decide upon. Dubay's account of what were fixed post and cash escort assignments was precise and when compared with the entry of the station diary, this Tribunal could only come to the inescapable conclusion that Jack was not on a General Mobile Patrol but on a fixed post assignment.

Again in Item 4 we have to accept Dubay's contention that eighteen (18) minutes between the incident and when Jack reported to the station was extremely protracted. There were no personal injuries to anyone and, the nearest phone was easily accessible. The report should have been made within a couple of minutes.

The Tribunal upholds the Company's decision in finding that Jack had breached its guidelines pertaining to the manner in which a security officer must conduct himself on duty. The penalty applied by the Company is in keeping with the penalty stipulated in its Security Handbook. While the Company has a discretion to either suspend or terminate for a first offence for the "**questionable loss of a firearm or ammunition**" it's decision to terminate cannot be

considered harsh and oppressive and contrary to the principles of good industrial relations practices especially since the officer had already been suspended for a firearm related offence.

The dispute is therefore dismissed.

Mr. V. Ashby
Chairman

Mrs. J. Rajkumar-Gualbance
Member

Mr. L. Achong
Member