



**TRINIDAD AND TOBAGO**  
**TRADE DISPUTE NO. 336 OF 2002**

**IN THE INDUSTRIAL COURT**

Between

**OILFIELD WORKERS' TRADE UNION - Party No. 1**

And

**SENTINEL SECURITY SERVICES LIMITED - Party No. 2**

**CORAM:**

**Her Honour Mrs. Sandra Ramparas - Presiding Member**  
**His Honour Mr. A. Aberdeen - Member**

**APPEARANCES:**

Mr C. Winchester )  
Industrial Relations Consultant ) - **for Party No. 1**

Mr. L. Murray )  
Industrial Relations Consultant ) - **for Party No. 2**

**Dated: 7<sup>th</sup> October, 2005**

**JUDGMENT**

The Oilfield Workers' Trade Union ("the Union") alleges that Ricardo Kerr ("the Worker") was dismissed from his employment with Sentinel Security Services Limited ("the Company") on April 13, 1999 in circumstances which caused his

dismissal to be harsh, oppressive and not in accordance with the principles of good Industrial Relations practice.

The Company denies this allegation and contends that when Inspector Olivere sought to remind the Worker about a particular incident, the Worker responded saying that **“he was going to look for a job”** and voluntarily terminated his employment.

### **THE UNION’S CASE**

The Union’s sole witness was the Worker. He testified that on April 13, 1999 at approximately 2:45 p.m., while on duty at Blue Water’s Inn, he informed his co-worker, Officer Hughes, of his need to use the toilet. Officer Hughes, who at the time was at the hotel lobby, instructed the Worker to open the gate and proceed. He also requested that the Worker notify him of his return to his location .While in the toilet, the Worker said that there was a knock on the door and he heard Mr. David Hairston, Hotel Manager, saying that he (Mr. Hairston) had just found Officer Hughes asleep on duty and was very angry. When the Worker came out of the toilet, he saw Officer Hughes and Mr. Hairston standing in front of the toilet. Mr. Hairston told them that he would be terminating the contract with the Company and asked Officer Hughes and the Worker to “work out” the shift until the morning.

The Worker reported the incident to Sergeant Roberts. She asked him to submit a written report and wait until 10 a.m. to speak with Inspector Olivere. When Inspector Olivere arrived he called both Officer Hughes and the Worker to his office. He told Officer Hughes that around 2.45 a.m. he was found sleeping on the compound and as a result, the Company had lost the contract and was now overstaffed. He advised Officer Hughes to go outside and he informed the Worker that he should look for another job.

The Worker said he pleaded with Inspector Olivere to allow him to keep his job. He **said ...”I begged him, I said Inspector, what do you expect me to do? I begged him all how and he said he is not entertaining any conversation on the topic.”** The Worker said he reported the matter to the Union. He denied that there was any outburst between himself and Inspector Olivere or that he had told Inspector Olivere that he was going to look for a job. However, he admitted that he was upset. He also denied returning any part of the uniform on the aforementioned date and claimed that he had returned it on the following Monday because he was expecting the Inspector to communicate with him, since he said, **“I never left the job. I never used to give any trouble”**

The Worker said that he performed his work well, was never disciplined and never received any warning letter.

In cross examination, the Worker testified that Inspector Olivere told him that he was **“off the roster” and he should “look for another job.”** He interpreted that to mean that he was dismissed because unlike E.C. Officer Hughes he was never called back to work. He stated that he was permanently employed with the Company.

Further cross examined, the Worker stated that Inspector Olivere told him, that if he did not return his uniform, he would not be paid his salary. He admitted that he had received psychiatric treatment sometime before the incident. He also indicated to the Court that he has been a member of the Copyright Organization of Trinidad and Tobago and that he went by the sobriquet “Buffalo Soldier”. He has an Identification Card as an official song writer and has produced his own music. He went to Commercial Protective Services (CPS) to seek employment. However, CPS refused to offer him employment on discovering that he had been dismissed from the Company.

## **THE COMPANY'S CASE**

Two witnesses were called to testify on behalf of the Company, namely Sergeant Eulaily Roberts and Inspector Olivere.

### **Sergeant Eulaily Roberts**

Sergeant Roberts stated that she has been in the employ of the Company for over twenty-five years. Her job function included preparing the roster, preparing salaries, doing sentry work, and going on assignments. On April 13, 1999, after she reported to work at 7a.m in the morning, she left the office for a while. She did not make any entry in the diary to indicate the time she had left the office or the time of her intended return. Normally Inspector Olivere held the fort when she was absent. She stated that on her return she went to her desk and while there, she heard the Worker's voice. Only then she realised that the Worker was in Inspector Olivere's office. She said she heard the Worker say that he was going to look for a job and she saw him when he stormed out of the office. She did not see E.C. Officer Hughes. She only saw the Worker. She knew he handed his uniform to Officer Martineau and she saw when Officer Martineau gave the uniform to Inspector Olivere. She knew of the sleeping incident sometime during the day. She did not request a report from the Worker neither did she receive one.

About 4 days after the incident she saw the Worker in a CPS uniform and concluded that he was employed with CPS. She knew that he was permanently employed with Sentinel and that he attended his work regularly and was punctual. She could not fathom why the Worker had left his job.

### **Inspector Michael Olivere**

He gave evidence that he had been employed with the Company for over sixteen years. In 1999 he was the Inspector in charge of Tobago office and he was

responsible for all the operations there. He had two subordinate staff, Officer F. Martineau and Sergeant E. Roberts. He stated that based on information he received from Mr. David Hairston via a facsimile, dated April 12, 1999, he had reason to conduct an investigation into an incident involving Officer Hughes and the Worker.

He stated that when the Worker was questioned about a "similar incident" which had occurred at Long Island Beach Hotel where he had been stationed, he became annoyed.

The Worker told him he did not recall such an incident. Inspector Olivere said he thought the Worker had "tripped" when he uttered in a loud tone **"You see me I going and look for a work"** and he stormed out of the office. He did not see the Worker until much later. Approximately five days after he saw the Worker in a CPS uniform.

In the course of cross examination, Inspector Olivere said the reason why he believed that the Worker had "tripped" was as a result of information he had received from the Director of Social Services of the Tobago House of Assembly stating that the Worker's mental health was not good.

He knew that the Worker was an out patient of the Psychiatric Department of the Scarborough General Hospital. However, Dr. Helen Marcano had spoken to him about the Worker and the Worker was given a fit for work certificate stating that he could resume duties. In the course of cross examination he confirmed that the Worker was not in the office when he spoke to Officer Hughes and did not hear the conversation that took place between Officer Hughes and himself. He said the Worker had not been charged with any offence, and had never been disciplined. On the date in question, Sergeant Roberts had met him in the office. He had no discussion with her regarding the Worker. He had not seen it fit to do so. When he came back in the evening he had heard from Officer Martineau that

the Worker had handed in part of his uniform. He knew that the Company had re-employed Officer Hughes after about one month. Officer Hughes and the Worker had been employed with CPS after the incident. He admitted that he had not written to the Worker to inquire whether he had abandoned the job and knew that the Company had not written to the Worker either, as all communication to Tobago had passed through him.

## **SUBMISSIONS**

**Mr. Winchester** submitted that Inspector never received any adverse report about the Worker's performance. He submitted that the second in command, Sergeant Roberts was less than truthful and asked the Court to tread with caution when assessing the weight of her evidence. He submitted that Sergeant Roberts had informed Superintendent, Edgar Hackett that Inspector Olivere had discussed the incident with Officer Martineau. This contradicted Inspector Olivere's evidence that he had not informed anyone in Tobago about the incident.

He submitted that Sergeant Roberts acted dishonestly by attempting to mislead the Court that she had not recorded the time when she left her security base on the morning in question, but strangely returned to base just in time to hear what the Worker had said behind closed doors. She had witnessed Officer Martineau handing over part of the Worker's uniform to Inspector Olivere's but she never recorded this information. Her evidence again conflicted with Olivere's who insisted that he had heard from Martineau that the Worker had returned part of his uniform.

Inspector Olivere also did not document anything in writing although he was the person in command and he also had junior officers with baton and loaded firearms.

Mr. Winchester contended that in contrast to the inconsistencies and contradictions revealed in the evidence of Inspector Olivere and Sergeant Roberts, the Worker's evidence was consistent and truthful.

After the Worker pleaded relentlessly in vain to be kept on, he handed in his uniform the following Monday and only then, he was given his salary.

He further submitted that Inspector Olivere feigned ignorance when asked whether Officer Hughes was re-employed by the Company. However, in cross examination, he admitted that he was the one who "contacted" and "interacted" with senior personnel in Trinidad to have Officer Hughes re-employed.

The Court observed that the Company had not disciplined Officer Hughes for sleeping on the job. He resigned and was re-employed within one month.

Mr. Winchester submitted that the Company never had cause to discipline the Worker and having only attained permanent status in his job, two months prior to the incident, he would not have left without a reason. He posed the question that, "When the Worker informed Inspector Olivere that he was in the toilet, what offence had he committed?" – "Absolutely none", and the Company made no attempt to rehire him.

He insisted that the Company had failed to act in accordance with the principles of good industrial relations practice and that it would be a travesty of justice if the Court were to rely on the manifest inconsistencies found in the Company's evidence and conclude that the Worker had voluntarily terminated his employment.

**Mr Murray** submitted that the Company concurred with the Union's view that the Worker had good behaviour and performance and there was no interest to be served by the Company firing him. He argued that Officer Hughes who had resigned was remorseful and decided to come back to the Company and was re-employed.

He submitted that the Company was always willing to assist the Worker. He argued that the Company sought to rely on the Worker's "ill health" because it felt that the Worker's action might have been caused by circumstances beyond his control. However, he did not pursue this line of argument because **"it was recognized that he left to go to another job almost immediately"**.

He submitted that the Worker was dishonest when he said the incident occurred on April 13<sup>th</sup> when in fact it occurred on April 12<sup>th</sup>.

He also indicated that the Worker had been requested by Sergeant Roberts to provide a report on the matter but no evidence of any report surfaced.

He submitted that the Worker became angry on being told that a similar incident had occurred at Long Island Beach Hotel and brought in his uniform since he was going for another job, which he secured after about 4 – 5 days.

He submitted further that Sergeant Roberts and Inspector Olivere sought to help the Worker at all stages. When Olivere received a fitness certificate from the Worker, he ensured he was back on the job.

He said the only act the Company was probably guilty of, was not writing to the Worker to inform him that he had abandoned his job or that the Company had accepted his resignation. He maintained however, that the Company's action was adequate to indicate it had accepted the Worker's resignation.

He submitted that all of the Worker's action showed that he was not a witness of truth.

He was employed with CPS but he insisted that only CPS could attest to the reason for the Worker's separation from that Company.

He argued that Inspector Olivere was composed and accepted that the Worker was a good performer and he acted in the interest of the Worker and was certain that had he returned to the Company, he would have been back on the job.

He submitted that there was no information before the Court to substantiate the Union's claim that he was unfairly dismissed.

### **THE ISSUE**

The issue this Court is asked to determine is whether the Company dismissed the Worker on 13<sup>th</sup> April, 1999 when Inspector Olivere told him that Blue Waters Inn had terminated its contract with the Company and he should find another job, or whether the Worker voluntarily terminated his services.

### **FINDINGS**

We have considered the oral and written evidence presented and the submissions of the Union and the Company and we find on the facts of this case that:

- i) the Worker, Ricardo Kerr, was summarily dismissed by the Company following the termination of the Company's Security Services contract with the Blue Water's Inn. The termination of its contract was made explicit by facsimile transmission dated April 12, 1999, (marked and tendered by the Company as Exhibit MOI.) The Hotel Manager, Mr. David Hairston, complained therein, that on a visit to the Inn at 2:45 a.m. on the said date, he saw the guard house light extinguished and the main gate wide open and unmanned. He went in search of the Security Officers, Officer Hughes and Kerr (the Worker) and found Officer Hughes armed and asleep, while on duty and the Worker, in the toilet. He complained that the Worker was found not to be alert on the job. This disrespect for the security and safety of his guests by the Company's security officers, annoyed him and led him to terminate the contract.
- ii) the Company had received no adverse complaints against the Worker during the fourteen months he had been employed. In fact, the Company

corroborated that the Worker was a **good performer** who attended work **regularly** and was **punctual**.

- iii) the Worker was not charged with any act of misconduct and no substantial allegation of cause was established by the Company to satisfy the Court that, as a consequence of such allegation, this Worker voluntarily resigned his permanent job.
- iv) Mr Murray's submission that the Company was caring could not be substantiated in light of the Company's action to dismiss the Worker without cause. For, it is obvious that the Worker could not have been "**alert on the job**" simultaneously while answering the call of nature. The Company's inhumane treatment of the Worker did not accord with the practice of good industrial relations.
- v) the Company, for the purpose of bolstering its case, as to the unfairness and unreasonableness of its action, invoked the Worker's past mental ill-health as the reason for the Worker's alleged "outburst" suggesting that he may have "tripped" and walked off the job. However, no expert medical evidence was offered to explain the Worker's state of mind or buttress the Company's argument in the face of such excessive penalty. Mr Murray realized that his argument was seriously flawed since he confirmed that the Worker had obtained employment with CPS soon thereafter, and, therefore, could not have been mentally unfit.
- vi) the **loss of Sentinel's contract** with Blue Water's Resort and the resultant "**overstaffing**" which the Company did not challenge was a legitimate reason for the termination of the Worker's services, for reason of redundancy, (provided that the procedural requirements had been satisfied). However, the Company evaded this issue. This urged the Court

to conclude that the “overstaffing “was a sham and used as a pretext to dismiss the Worker.

The principles and practices of good industrial relations impose a duty of fairness and reasonableness on the Employer in treating with his employees and he should not act in an arbitrary or capricious manner particularly, when it involves the Worker’s “bread and butter”

In **TD No.351/1997 between Association of Technical, Administrative and Supervisory Staff and Caroni (1975) limited** this Court stressed the importance of one’s job when it observed that “...the suggestion has been made that an employee may be said to have acquired something akin to property in his employment.”

Accordingly, an employer should exercise caution and act in accordance with good industrial relations practice before he imposes this ultimate penalty. Barring exceptional circumstances, (**see TD No 15 of 2000 between Bank and General Workers’ Union and the Public Service Association**), the Employer should be satisfied that progressive disciplinary measures were inappropriate or have failed to yield acceptable results.

Accordingly, for all the reasons stated herein and on the whole of the evidence presented, the Court accepts as fact the Worker’s evidence and finds that the treatment meted out to him was harsh,oppressive and contrary to the principles of good industrial relations practice.

### **THE AWARD**

Having arrived at the above decision, we now consider an appropriate award. Taking into account the Worker’s fairly short period of employment, his inability to

retain reasonable employment until some nine months after and the circumstances which rendered his dismissal harsh, oppressive, and contrary to the principles and practice of good industrial relations, we award the sum of twelve thousand dollars (\$12,000.00) as damages, This sum should be paid to the Worker on or before 31<sup>st</sup> October, 2005.

**Her Honour Mrs. S. Ramparas  
Chairman**

**His Honour Mr. A. Aberdeen  
Member**