



TRINIDAD AND TOBAGO
TRADE DISPUTE NO. 147 OF 2000

IN THE INDUSTRIAL COURT

Between

**CIPRIANI COLLEGE OF LABOUR
AND COOPERATIVE STUDIES - Party No. 1**

And

**BANK AND GENERAL
WORKERS UNION - Party No. 2**

CORAM:

Her Honour Mrs. Sandra Ramparas - Chairperson
Her Honour Ms. Bindimattie Mahabir - Member

APPEARANCES:

Mr. Keith Scotland)
Attorney-at-Law) - for Party No. 1

Mr. Andre Des Vignes)
Attorney-at-Law) - for Party No. 2

Dated: 24th March, 2005

JUDGMENT

This dispute is brought by the Bank and General Workers Union (hereinafter called "the Union") against Cipriani College of Labour and Cooperative Studies

(hereinafter called “the Company”) over the dismissal of Mr. Ben Baksh (hereinafter called “the worker”).

The dispute was referred to the Court by the Minister of Labour by Certificate of Unresolved Dispute dated the 24th day of August, 2000 and according to the Certificate **“The dispute as reported by the Union, concerns the dismissal on April 01, 1999 of Ben Baksh, Watchman”**. Baksh was employed on 1st November 1995 and was in receipt of a monthly salary of \$1,542.00 plus COLA.

The issue giving rise to this trade dispute was the dismissal of the worker by the Company on April 01, 1999. The Company’s letter to the worker dated 31st March 1999 and signed by Dr. Roosevelt Williams, Director was stated in the following terms:

“I refer to my letter dated January 21st 1999 by which you were suspended on full pay pending further investigations. I also refer to my letter dated February 25th 1999 by which you were summoned to attend an inquiry on Tuesday 2nd March 1999 at 10:00 am at the Cipriani College of Labour and Co-operative studies, Valsayn, where in the presence of your Union representatives and the Security Guards of Commercial Protective Services you were given the opportunity to explain the circumstances surrounding the disappearance of the College’s compressor motor.

In light of all the evidence submitted to the College and in the light of investigation conducted by the Police, the Board has no other alternative but to terminate your services, effective as of April 1st, 1999.”

The Union alleges that the worker’s dismissal was harsh, oppressive and contrary to good industrial relations principles and practice and seeks an order of

the court reinstating him in his former employment without loss of benefits. The College for its part contends inter alia that the worker misconducted himself thereby breaching his contract of employment when:

- a) he failed to exercise due diligence in the prevention of trespassing on the College's compound and ensure adequate protection against theft.
- b) allowed and failed in his duty to report entry of unauthorised persons onto the College's compound for reason that led to the removal of the compressor and never inspected or observed the person/s or vehicle on departure.

The Union called the worker and watchman Harold Boodoo to give evidence on its behalf.

The College called Dr. Rosevelt Williams, Director of Cipriani College and Watchman Lincoln Perouse and Security Officers George Giles and Joseph Arnold to give evidence on behalf of the Company.

THE UNION'S CASE

Oral Testimonies of the Witnesses

Ben Baksh (The Worker)

The worker reported for duty on 12th January, at approximately 9:45 p.m. and made a patrol with watchman Lincoln Perouse before he took over the 11:00 p.m. – 7:00 a.m. shift. He indicated that on their handover patrol, the compressor was intact and that everything was "OK". During his shift two private security officers from Commercial Protective Services whom the College employed to work together with the watchmen came into the compound and Carl Herrera the

accountant also came sometime later. He did not allow anyone else to come or trespass on the compound during his shift. On the following morning, 13th January 1999, when the worker handed over to Mr. Harold Boodoo for the 7:00 – 3:00 shift again everything was “OK” and the compressor was intact. It was within one hour of Mr. Boodoo’s commencement of his duties at 7:00 am that he (the worker) received information from the groundsman that part of the compressor was missing.

In cross-examination he said that he had responsibility for the missing part of the compressor but maintained that ***“It didn’t happen during my time, because I didn’t see anything, but I worked the shift”***.

In re-examination he categorically denied that he was responsible for the missing part of the compressor and also denied ever being assigned the duty to stop and search vehicles or persons

In cross- examination he acquiesced that his duties included preventing people from trespassing on the college’s compound, protecting the property of the college against theft, making sure that there are no intruders or trespassers on the compound and making appropriate entries in the watchman’s diary when people enter and depart from the compound. However it is not the duty of the watchman to check bags or vehicles. ***“That is for security”***. He indicated that

the security officers used their pocket diary to keep records, as they are not permitted to use the watchman's diary.

He said that on 21st January, after the incident with the missing compressor the college suspended him on full pay pending an investigation. On 2nd March 1999 he was invited to a meeting and was represented by three members of the union. They asked questions and he was also given an opportunity to ask questions.

Harold Boodoo (Watchman)

He testified that he has been a watchman for over fifteen years. On 13th January he was performing watchman duties at the Cipriani Labour College. Part of his duties entailed patrol of the compound and checking all the college property to ensure they are secured and making entries in the watchman's diary pertaining to the patrols. At the time he was not authorised to check vehicles. On January 12, 1999 he worked the 7.00 - 3.00 p.m. shift but he reported for work early about 6.30 a.m. Before he relieved Ben Baksh they patrolled throughout the College compound including the area where the old compressor was located and according to his evidence ... ***"I didn't observe anything missing. Everything was intact"*** and Baksh wrote in the diary that ***"Watchman B. Baksh and Watchman H. Boodoo returned from patrol of the compound having found all to be correct and in good order"*** That entry was made at 6.57 by Baksh.

He stated that within an hour of taking up duty about 7.25 to 7.30 while the Worker and himself were in the car park the groundsman came to the car park and told the worker first and then told him that the compressor was missing. He said, ***“I went there and we observed it missing and I made the entry at 7.10.”*** He said the top piece of the compressor was unbolted for some time.

THE COMPANY’S CASE

Lincoln Perouse (Watchman)

Perouse evidence basically corroborated the evidence of Harold Boodoo and the Worker. He stated that on January 12, 1999 he worked the 3:00 - 11:00 p.m. shift alongside Harold Boodoo. At the end of his shift he made a patrol with the worker at approximately 9.20 p.m. and up that time the compressor was intact. On January 13, he worked 3:00 - 11:00 p.m. shift. He was informed that the compressor was missing. He went and had a look and found that it was true

George Giles & Joseph Arnold (Security Officers)

The Company’s main witnesses Giles and Arnold, private security guards from Commercial Protective Services whom the court was requested to subpoena were on duty on the night of 12th January 1999 on the same shift as the worker. Both indicated that the worker had told them that **“his boss’** had given approval for the compressor to be taken away.

According to Arnold's written statement:

"... We pulled up in front the barrier gate around 10.03 pm A vehicle was observed parked on the lawn next to the air condition unit. There were three occupants One was 5 feet 5 inches with a large belly. They were walking on the lawn heading to the garage area. Mr. Baksh came to me where I was standing with Officer Giles. He informed us that his boss had told him that the men was coming for the part from the compressor so he gave them permission to take it. After the men take up the part he left the compound in the same vehicle T.G. 2822. "

Giles written statement:

"...I noticed that there was a jeep in the compound ... It was heading north on the western end at the administration building. I continued heading west. I met Mr. Baksh in front of the building near the southwestern corner. He informed me that his boss gave them permission to collect some parts from the back. After he made that statement I proceeded to the back to meet Cpl Arnold, Mr. Baksh walked alongside me. We met Cpl Arnold near the library Mr. Baksh reported the same statement he made to me to Cpl Arnold. The vehicle was parked near the air condition unit...Three males with low style hair ...proceeded on foot to the garage area. They had tools in their possession...Mr. Baksh left and went to the front...Mr. Baksh then returned to the back...The driver and the two other men lifted a part from the compressor and placed it on the back of the jeep...Mr. Baksh had returned to the area where we were standing ...Mr. Baksh then left us and went in the direction of the vehicle gate..."

In his oral testimony he stated (supra) that **10.03 p.m** that night, three men in a Land Rover jeep were allowed into the Compound by the worker and they removed the compressor. However, in his written statement Arnold indicated that he and Giles arrived at Cipriani Labour College around **10:03 p.m.** Giles' account

in cross examination and his account recorded in his written statement to his superior submitted five days after the incident revealed several inconsistencies .In his written statement he said that Baksh went to the front of the building when the compressor part was being dismantled. However, in cross-examination he said that Baksh went by the garage. In his oral testimony Giles also gave a different version of Baksh's whereabouts when the alleged vehicle was departing .He stated that Baksh opened the gate /barrier for the vehicle to depart contrary to Baksh going ***in the direction of the vehicle.***

Arnold said in cross examination that after he secured the canines he went and spoke to Baksh who was in the front of the building However, in his written statement he said that the first time he spoke to Baksh was when ***Mr. Baksh came over to me where I was standing with Officer Giles*** and they were dealing with the compressor. He also said in cross examination that Baksh went and opened the gate for the Land Rover to come in but in his written statement he said that the Land Rover was parked on the lawn.

Giles written statement did not only conflict with his oral evidence but what appeared to be more disturbing was the fact that his (Giles) evidence was materially inconsistent with Arnold's evidence. By way of example he stated that the only time he saw Baksh go by the gate was when Baksh went to open it for Herrera to enter. This conflicts with his written statement (see page 7) and also conflicts with the evidence given by Giles who said he saw Baksh open the gate

from some 150 to 200 feet away. When questioned by counsel for the union why such material facts were excluded from his written statement he claimed that Sargeant Harris, his superior did not include them notwithstanding that the said statement was read over to him and he certified it as correct.

Arnold said under oath that on the night of January 12, he checked the compressor during his tour of duty however, this was not included in his written statement five days after the incident.

There was also some confusion about whether an entire compressor was missing leaving only the concrete plinth on which it sat or whether it was the motor that sat on top of the compressor that was missing. The dismissal letter refers to the "College's compressor motor" as missing.

Arnold claimed that the compressor was removed leaving only concrete while George Giles said that only a part of the compressor was removed.

Giles and Arnold's evidence were riddled with contradictions and inconsistencies which caused the court to doubt the veracity of their account of the events that took place on the night of January 12, 1999.

Dr. Roselvet Williams (Director Of Cipriani Labour College)

He gave evidence that he received a report that the motor of the compressor went missing during the night of January 12, 2000 when Baksh was on duty. He called for an investigation to find out **“the whereabouts and responsibility for that missing compressor motor.”** He received reports from security guards Giles and Arnold, watchmen Baksh, and Boodoo. The worker was suspended on 21st January with full pay pending an investigation by the College. The incident was also reported to the police. The College conducted an investigation in early March and the following persons were invited to attend: 1) worker and his union representatives, security officers George Giles, Joseph Arnold and Sergeant Harris, watchmen Harold Boodoo and Lincoln Perouse, and other college personnel including himself. The worker was given an opportunity to ask questions.

He stated that he (Dr Williams) led no evidence at the inquiry to ascertain whether Baksh, the worker had gotten permission from his supervisor Sealy Secretary/Treasurer of the College. He stated that based on the reports that emanated from the College investigation and the police investigation the Board took the decision to terminate the worker’s employment. He admitted that Baksh did not have the opportunity to challenge the police report, as it was never shown to him.

Based on all the evidence and the submissions of the parties the question we have to ask ourselves is on what evidence did the College find the worker guilty of allowing entry of unauthorized persons into the college compound and failing to report their presence, for reason that led to the removal of the compressor motor. The ‘**eye witness**’ accounts presented by the college’s two chief witnesses Giles and Arnold were not cogent or compelling.

OUR FINDINGS

We have had the opportunity of seeing and hearing the witnesses, of observing their demeanour in the witness box and of assessing their credibility. We have grave difficulty in accepting the evidence of the College’s two main witnesses Giles and Arnold. We do not accept their respective accounts of what transpired on January 12,1999.

On the contrary, we find the evidence presented by the Union, in particular Boodoo’s evidence was consistent and straightfoward. He was unshaken after some three hours of giving evidence in chief and being cross-examined, by counsel. We agree with counsel for the union **that Boodoo has “everything to lose and no interest to protect”** since he is still in the company’s employ.

We, therefore, accept his evidence as evidence of the truth that ...**“Everything was intact when we made our rounds on 13th January, 1999”**.

Interestingly enough, both Giles and Arnold stated that Mr. Ben Baksh claimed that “**his boss**’ authorized the removal of the compressor, or a part of the compressor, yet the College did not see it fit to pursue this for verification. According to Arnold, it was “**not relevant.**”

And in fact Dr Williams affirmed that he led no evidence at the inquiry to ascertain whether the worker had obtained permission from his (the worker’s) boss, Mr. Sealy.

Also, it is noteworthy that the college produced no disciplinary record of the worker and on that basis we have to assume that this worker has a clean record.

On the totality of the evidence before the Court, we find that the college failed to establish the allegations of misconduct on a preponderance of credible evidence.

The court reviewed the investigative procedure followed by the college.

We find that the College erred in not allowing Mr. Ben Baksh the opportunity to challenge the findings of the Police which, Director, Williams admitted, that the Board had considered before terminating the worker’s employment.

This is, in our opinion a clear travesty of justice and a denial of Mr. Ben Baksh of his right to be heard and a breach of the principles of natural justice.

The jurisprudence of this Court is replete with cases in which the Court has expressed the importance of natural justice as a fundamental principle in the practice of good industrial relations.

In this regard we cite *T.D. 370 of 1997 between Bank and General Workers Union and Unit Trust Corporation*.¹

The next two points that we are about to make were not raised as issues and do not in any way influence our consideration of the matter at hand. We mention them so that Companies and employers might understand and appreciate the likely consequences of the non-adherence to certain good industrial relations practices. It is these:

- a. A job description is a fundamental part of an employee's contract. It should therefore be spelt out in fair detail and be agreed between Company and employee. The purported job description of Mr. Baksh is quite general and at best an apology for what a job description should be.

¹ Delivered on 1st February 1999

- b. An employer should have a checklist of important and or major materials/ equipment/ items stored at relevant points on their premises for the guidance of personnel such as a Watchman so that the items are checked during his patrol and comments made next to the listed items as appropriate. Any permutation of this principle as suits the relevant industry would disallow for the kind of purported loss that the Company in question may have suffered.

Having regard to all the circumstances of the case and in accordance with equity, good conscience and the substantial merits of the case, and having reviewed all of the evidence, the most important ones which have been discussed herein, it is our view that the dismissal of the worker occurred in circumstances that were harsh, oppressive and not in accordance with the principles of good industrial relations practice.

In accordance with our findings the worker is entitled to one or more remedies under **section 10 of the Act**.

Under **section 10 (4)** *“... the Court may, in any dispute concerning dismissal of a worker order for re-employment, or re-instatement (in his former or a similar position) of any worker, subject to such conditions as the court thinks fit to impose, or the payment of compensation, or damages whether or not in lieu of such re-employment or re-instatement or the*

payment of exemplary damages in lieu of such re-employment or re-instatement.

In this dispute we are satisfied that an order for damages would meet the justice of this dispute and would be an appropriate remedy.

Accordingly, we order the College to pay to the worker the sum of sixty five thousand dollars as damages on or before 29th April, 2005.

Mrs. S. Ramparas
Chairperson

Ms. B. Mahabir
Member