



TRINIDAD AND TOBAGO
TRADE DISPUTE NO. 265 OF 2003

IN THE INDUSTRIAL COURT

Between

**NATIONAL UNION OF GOVERNMENT
AND FEDERATED WORKERS - Party No. 1**

And

UNIVERSAL PROJECTS LIMITED - Party No. 2

CORAM:

| | | |
|--|---|--------------------|
| Her Honour Mrs. S. Ramparas | - | Chairperson |
| His Honour Mr. A. Ramrekersingh | - | Member |
| His Honour Mr. P. Rabathaly | - | Member |

APPEARANCES:

Mr U Cabralis)
Labour Relations Officer) - for Party No. 1

Mr G. Nicholas)
Attorney- At- Law) - for Party No. 2

Dated: 29th July,2005

JUDGMENT

Delivered by Her Honour Mrs. S. Ramparas

This trade dispute between the **National Union of Government and Federated Workers** (“the Union”) and **Universal Projects Limited** (“the Company”) concerns the termination of employment of Sahadeo Sumairsingh (“the Worker”) by letter dated August 09, 2002.

Party No. 1 is not a Recognized Majority Union and made its application pursuant to section 51(1)(c) of the Act.

Party No. 2 is a limited liability Company, duly incorporated under the laws of Trinidad and Tobago and is engaged in the business of providing building and construction services. The Company was subcontracted in 2002 by Biwater International Limited, to conduct certain work in relation to the New Beetham Waste Water Treatment Plant.

Both parties submitted written statements of Evidence and Arguments as directed by the Court. Hearing commenced on 21st March, 2005.

The Union called the worker, the sole witness, to give evidence on its behalf. At the close of the Union's case, Mr. Garvin Nicholas, Attorney for the Company requested leave of the Court to make a no case submission on the basis of the Union's evidence. Leave was granted. The Court, having heard the Company's submission and the Union's reply on the no case submission, was satisfied that a prima facie case had been made out against the Company. Accordingly the Court ruled that the Company had a case to answer, and called upon Party No 2 to present its evidence.

THE UNION'S CASE

It is not in dispute that the Worker was employed with the Company as a Safety Officer on June 13, 2002 and was paid a monthly salary of \$6,000.00. He worked seven days per week, Monday to Thursday from 7:00 a.m. to 5:30 p.m. and Friday to Sunday from 7:00 a.m. to 3:30 p.m. He performed the following duties:

- Ensuring that workers under his supervision abided by the project's work rules and regulations regarding wearing safety gear at all times on the job site.
- Reporting accidents to Mr. Wendell Grant, Safety Manager.
- Giving instruction as to the instalment of safety barriers.
- Routine supervision of workers under his control.

The written Contract of Employment which was signed by both parties showed that the worker was employed temporarily on a monthly contract. However, according to the worker's

testimony, he was verbally informed that the duration of the project was eighteen months and that he would be guaranteed twelve months employment. The contract of employment reproduced hereunder (Exhibit SS1) provides as follows:

“UNIVERSAL PROJECTS LIMITED
PERSONAL CONTRACT
CASUAL EMPLOYMENT
MONTHLY CONTRACT

EMPLOYEE’S NAME: SAHADEO SUMAIRSINGH

I hereby accept casual employment with Universal Projects Limited on the New Betham Wastewater Plant Project as a SAFETY OFFICER and agree to the following conditions of service.

1. I will be paid on an hourly basis at the rate of \$6,000.00 Per month and my normal working hours will be from 7.00 am to 5.50 pm Monday to Thursday and 7.00 am to 3.30 pm Friday, Saturday, Sunday and Public Holidays. Overtime rates will only apply for hours worked on Sundays and Public Holidays.
2. I confirm that I have been notified that my period of employment will be temporary and will be at the discretion of management.
3. I agree that all salary payments will be made through my bank account.
4. I agree to be medically examined upon the company’s request and to take the relevant drug test whenever required.
5. I am aware of the grievance procedure in place on this project and do hereby pledge acceptance of the final decision on any complaint/grievance lodged and will not withhold my labour for whatever reason.
6. I confirm that I have read and understood the Project’s Work Rules and Regulations and accept all the above-mentioned conditions and I hereby affix my signature as evidence hereof.

.....
EMPLOYEE SIGNATURE

.....
DATE

.....
WITNESS

.....
DATE

.....
HUMAN RESOURCE MANAGER

.....
DATE”

The Company hired three Safety Officers and a Safety Manager on the project, Patrick Derry, A. Scott, S. Sumairsingh, (the Worker), and W. Grant (safety manager) Mr. Darrel Ram was employed as a labourer and was allegedly designated to the post of safety officer after the Worker's services were terminated.

In the course of his cross examination, the Worker said that he knew that his employment was at " the discretion of management" and he admitted that he worked for approximately \$24.00 per hour and not less than the minimum wage, contrary to what was stated in the Union's Evidence and Arguments.

He stated that he was asked to report to the office on August 09, 2002. When he reached the office it was closed. He went back on the 10th August and he was given a dismissal letter. The text of this letter reads as follows (Exhibit SS2):

"UNIVERSAL PROJECT LIMITED

August 9, 2002

Mr. Sahadeo Sumairsingh
Safety Officer

Dear Mr. Sumairsingh

We wish to inform you that your services are no longer required effective 9/08/02. This is due a reduction in the Safety Staff.

We would like to take this opportunity to thank you for your services and to wish you success in your endeavours.

Yours respectfully
UNIVERSAL PROJECTS LIMITED

OLIVER HOULDER
HUMAN RESOURCE MANAGER"

THE COMPANY'S CASE

Essentially the Company's case is that in or around July 2002, the work at the Beetham Project was coming to a close and there was a scaling down of the Company's operations. This resulted in a surplus of the labour requirements of the Company and caused some sixty workers, including the Worker, to be retrenched.

The Worker was the last safety officer whom the Company employed and accordingly was selected for retrenchment. Wendel Grant was appointed Safety Manager in July 2002. After the retrenchment of the Worker, Darrel Ram, a labourer whom the Company hired at the inception of the project, was upgraded to a semi-skilled labourer. He was assigned the additional task of assisting the safety officers in removing safety equipment.

Helen Wharton, assistant to the Human Resource Manager testified on behalf of the Company. Her evidence supported the Company's Evidence and Arguments. She confirmed that the Worker was given a temporary monthly employment contract and corroborated that the Worker's contract was "... at the discretion of Management." The Worker was paid \$6,000.00 per month for work performed Monday to Thursday 7:30 a.m. to 5:30 p.m. and Friday, Saturday, Sunday and Public Holidays from 7:30 a.m. to 3:30 p.m. Overtime rates applied only to hours worked on Sundays and Public Holidays.

She testified that the reason for the retrenchment of the sixty workers, including the Worker was mainly due to the fact that Bewater International stipulated the manpower requirements needed for the project and their operations were closely monitored by them.

She denied that the Company had hired Darrel Ram, labourer in the position of Safety Officer or had "promoted" him to safety officer position. She affirmed that the Company had upgraded him to semi-skilled labourer and he assisted the Safety Officers mainly in transporting safety equipment.

She confirmed that Darrel Ram was appointed at the inception of the project.

CLOSING ADDRESSES

Mr. Cabralis submitted inter alia that the Employer made no attempt to redeploy the Worker. Further, he submitted that the Company acted contrary to the principle of good industrial relations practice when it retained the unskilled labourer to perform the safety function and retrenched the Worker, a skilled safety officer.

He submitted that the Worker was hired in June and in August the Company stated that it was winding down operations but it was not actually wound up until April 2003. Further, that the Worker had an expectation to remain in the employ of the Company for twelve months. It was difficult for him to accept the Company's evidence that Biwater "called the shots" and dictated the number of safety officers whom the Company employed. As far as he was aware, when a project of that nature was assigned all that was required of the Company was a declaration of the specific time of completion of the work assigned and it mattered not whether the Employer/Company hired "a thousand workers or five hundred. The idea is to get the project completed satisfactorily." At no time did the Company indicate to the Worker that it was dissatisfied with the Worker's performance.

Mr. Nicholas submitted that the Worker was hired on June 13, 2002 by Universal Projects Limited. His contract specifically stated that it was "a casual temporary monthly contract and at the discretion of Management" and the hours of work were outlined.

The contract, as stated in its specific form, was necessary because the employment situation was "fluid" and depended on the contractor Biwater International. He submitted that towards the end of July, Biwater International informed the Company that it would commence "winding down operations" and the Company started laying off some twenty workers weekly. Biwater had a formula in place for determining the number of safety officers required at any one time and it was based on a ratio between the number of employees employed vis a vis the number of safety officers.

He further submitted that the Employer acted reasonably and in accordance with good Industrial Relations practice when it selected the Worker for retrenchment as he was the last Safety Officer employed and the most junior. He contended that the Union failed to provide the Court with any clear and cogent evidences that Darrel Ram was promoted Safety Officer and it failed to substantiate its claim that the Worker was paid below the minimum wage and was not paid of overtime for Sundays and Public Holidays.

ISSUES FOR DETERMINATION

The issues for determination by the Court are:

- whether there was a genuine redundancy situation
- whether the employer followed good industrial relations practice in the termination of the worker's services

THE LAW

Under section 2 of the Retrenchment and Severance Benefits Act No. 32 of 1985 Retrenchment" is defined as "the termination of a worker at the initiative of an employer for reason of redundancy..." and "redundancy" is defined as "the existence of surplus labour in an undertaking for whatever cause." It follows therefore, that the one and only ground on which an employer may justify the retrenchment of a worker is where there is a surplus of labour to the Employer's manpower requirements.

The application of the law as it relates to the issue of retrenchment is aptly illustrated in the citations of the cases mentioned hereunder.

In TD No.119 of 1993 between the Seamen and Waterfront Workers' Trade Union and the Port Authority of Trinidad and Tobago delivered on 27th February 1998, the Court stated inter alia that workers retrenched by the Authority in June 1993 were not surplus to the labour requirements of the Authority since they had been replaced by casual and/or contract labour from

the date the retrenchment had occurred. However, the Court agreed that the implementation of the Company's manpower restructuring plan resulting in the reduction of its labour requirements, satisfied the definition of redundancy under the Act and provided a basis in law for retrenchment.

See also

- (i) TD No 91 of 1996 between the Oilfield Workers' Trade Union and Nestle Trinidad and Tobago Limited,
- (ii) TD No. 3 of 1997 between Bank and General Workers' Union and Trinidad Express Newspaper Ltd, and
- (iii) TD No. 70 of 1988 between Transport and Industrial Workers' Union and Bata Trinidad and Tobago Limited.

In TD No. 10/12 of 1998 Transport and Industrial Workers Union and CGA delivered on 16th October 2000 the Court cautioned “...*that employers may abuse their right to retrench by using retrenchment as a guise for wrongfully terminating the employment of workers whom they deem undesirable and this Court must be vigilant to detect and deter such conduct...*” In this judgment the Court made reference to TD No. 4 of 1991 Trinidad Distillers Ltd. and Transport Workers' Union where it found that the retrenchment of the worker was a sham and it awarded substantial damages to the aggrieved worker.

We now turn to the issues for determination.

- 1) Whether there was a genuine redundancy situation.

The Company's uncontroverted evidence stated that it had approximately 150 workers around the start of the project in or around October 2001. In July 2002, the project was nearing completion and there was a scaling down of its operations. This led to the

resultant surplus of the company's manpower requirements and some 60 workers were retrenched, over a period of time, including the worker. The unchallenged evidence of the Company's Assistant to the Human Resources Manager, Mrs. Wharton, corroborated that the number of safety personnel recruited, was proportionate to the number of workers employed in the Company. Therefore, when the Company retrenched the workers, it resulted in a surplus of safety personnel and the Company had to reduce the number of safety officers by one in order to maintain a proper balance.

In light of the foregoing, it is the finding of the Court that the scaling down of the Company's operation led to "the existence of surplus labour" and formed a valid, legal basis for the retrenchment of the worker.

- 2) Whether the retrenchment of the worker accorded with the principles of good industrial relations practice, that is, whether the worker was selected in accordance with some objective criteria which were fairly applied.

In this context, the last in first out; all other things being equal," is an example that accords with the practice of good industrial relations principles.

In *Polkey v A E Drayton Services Ltd.* 1988 ICR 142, HL, it was held that in the case of a redundancy dismissal, the employer will not normally act reasonably and fairly unless he

- 1) " Warns and consults with any employees affected or their representatives;
- 2) adopts a fair basis on which to select for redundancy ,ie, uses objective criteria and applies those criteria fairly; and
- 3) takes such steps as may be reasonable to avoid or minimise redundancy by redeployment within his own organization"

The major contentions by the Union in this regard were that Wendell Grant was hired as the Safety Manager after the worker was employed and Darrel Ram was promoted to Safety Officer after the worker was retrenched. The former was not supported by any cogent and reliable evidence. The documentary evidence which the Union sought to enter after it had closed its case could not be verified and the Court refused the Union leave to enter this document. Notwithstanding, we had before the court the worker's own admission that he (the worker) was the last Safety Officer to be employed by the Company, a stark contradiction to what was pleaded in the Union's Evidence and Arguments.

As regard the latter, we accept the Company's explanation that Darrel Ram had been upgraded to semi-skilled labourer and had not been promoted to Safety Officer as alleged by the Union.

On the basis of the LIFO principle we find that the worker was fairly selected for retrenchment.

However, based on our observation of what transpired on August 10, 2003, we find that the Company did not inform the worker of the retrenchment and no notice was given to him prior to the termination of his services. The Company failed to prove that unforeseen circumstances prevented it from giving any notice to the worker. The "**discretion of Management**" should not be exercised in an ad hoc or cavalier manner to the detriment of either party. The principles and practices of good industrial relations require that such discretion should be exercised fairly and reasonably. While we are satisfied that based on the nature and duration of the contract, the worker would have had some idea of the imminent closure of project, the Company had an obligation to give him reasonable notice. In this regard we refer to R.S.B.D 41 OF 1987, George Ferguson and Southern Welding and General Contractors delivered on June 16, 1995 where this Court affirmed that "*...an employer is required by the principles and practices of good industrial relations to give reasonable notice of retrenchment in such cases, and this will*

normally mean the minimum period of notice that is expressly or impliedly included in the terms of the worker's contract of employment"

Since this worker does not qualify for severance benefits in accordance with the R.S.B Act 1985, only reasonable notice is required, in which case one month's notice would have been adequate.

In T.D No 5 of 1999, Tobago General Workers' Trade Union and Coco Reef Hotel and Spa, similar to the instant dispute, the worker did not qualify for severance benefits and the Court in the exercise of its equitable jurisdiction found that the termination of the worker with "immediate effect" was precipitous and amounted to inadequate notice and a breach of good industrial relations.

The Employer's precipitous action in terminating the worker's services prematurely 4 days prior to the expiry date of the legally binding contract raised the Court's suspicion that something had gone amiss. The contract would have mutually ended on 12th August 2002 and the issue giving rise to this dispute would not have arisen. However, it seemed that the Company did not seek legal advice before it embarked on the retrenchment exercise.

In the circumstances, we find that the failure to give reasonable notice to the worker prior to his termination, was harsh and contrary to the practice of good industrial relations

Accordingly, pursuant to Section 10 (3) of the Act we order the Company to pay the worker damages amounting to 1 month's salary (\$6000) on or before 15th August,2005.

Mrs. S. Ramparas
Chairperson

Mr. A. Ramrekersingh
Member

Mr. P. Rabathaly
Member