

BARBADOS

IN THE EMPLOYMENT RIGHTS TRIBUNAL

NO. ERT 092/2014

BETWEEN:

NICOLE LAYNE

CLAIMANT

AND

G4S SECURE SOLUTIONS (BARBADOS) LIMITED

RESPONDENT

BEFORE:

KATHY-A. HAMBLIN, Deputy Chairman

FREDERICK FORDE, SCM, Employees' Representative

EDWARD BUSHELL, Employers' Representative

DATES OF HEARING: November 20, December 11 and 12, 2017

DATE OF DECISION: December 13, 2017

APPEARANCES: Mrs Leslie Trotman-Edwards Attorney-at-Law and Sir Roy Trotman, of the Barbados Workers' Union for the Claimant who was present.

Mr. Michael Koeiman of Clarke Gittens Farmer, Attorneys-at-Law for the Respondent who was present.

DECISION

The unanimous decision of the Tribunal is that:

1. The Claimant failed to give written notice to the Respondent of her intention to appeal the Respondent's decision to dismiss her in accordance with Section 3(1) of Part B of the Fourth Schedule of the Employment Rights Act, 2012-09 (as amended) and accordingly, her claim that she did not have the benefit of due process by the Respondent is dismissed.
2. The Claimant also fails on the second ground on which she claims, namely, that there was no case regarding any action demanding dismissal.
3. The matter is accordingly dismissed.
4. Reasons for the decision will be supplied at a later date at the request of either party provided that request is received within 14 days of today's date.

Deputy Chairman

Employees' Representative

Employers' Representative

In this matter, Nicole Layne, sometimes referred to as an aviation officer or a security officer, complains that she was unfairly dismissed by the Respondent, G4S Secure Solutions (Barbados) Limited on September 12, 2013.

The incident giving rise to her dismissal occurred on June 13, 2013. The Claimant admits that on that date she was overheard on a walkie talkie using (if we accept her evidence) a single expletive while in conversation with her colleague, Erskin Browne. A complaint was made by JetBlue to G4S that the claimant unleashed a tirade, 'interspersed with numerous swear words' against JetBlue agents, which was heard over the walkie talkie by JetBlue officials, after she was informed by a JetBlue employee that her bag count was inaccurate. JetBlue officials noted that she did not apologise for the incident and requested that she 'not be allowed to work with JetBlue in any capacity'.

She brings this claim, filed with the tribunal on November 21, 2014 on two grounds, first that the employer deliberately delayed processing her appeal against the decision to terminate her, because her request was made through her union, as a consequence of which she did not have the benefit of due process and second, that there was in any event no case regarding any action demanding dismissal.

The matter was referred to the Tribunal by the Chief Labour Officer on December 18, 2014, and beginning in May, 2015, the Tribunal secretariat made several oral and written requests to the Respondent to file its answer and supporting documents.

The hearing of this matter was long delayed as a direct consequence of the failure and/or refusal of the Respondent to comply with those requests. Those documents were filed and produced on December 4, 2017, more than 2 ½ years after the initial correspondence was sent to the Respondent. Going forward, there must be clearly defined procedural rules governing the tribunal that would permit us to deal appropriately with delinquent employers such as the Respondent.

The Tribunal has consistently held, where an employer fails to follow the disciplinary procedure which is clearly set out in the Fourth Schedule of the Act, that the employee was unfairly dismissed. Our interpretation and application of the Fourth Schedule must be consistent whether the party in breach of the procedural rules is the employer or the employee. The language of Section 3(1) of Part B of the Fourth Schedule is mandatory and it is unambiguous; it allows for no exceptions.

Our mandate is to apply the law as set out in the Act and we ought not to be swayed by sympathy for the Claimant or indeed for any party to the proceedings. Our role is not to determine whether she suffered an injustice. We are constrained to consider whether the employer acted as a reasonable employer would have done in a similar situation.

From the evidence we received it appears that this was an isolated incident, but a deliberate outburst by a claimant frustrated by a request that she do her job properly. Whether intentional or not, the claimant's unprovoked outburst was overheard by the respondent's business partner who took great offence at her statements. Robust language is a part of our landscape and one may dare say our culture, but there are certain instances where such conduct is inexcusable.

We have reviewed the authorities cited by both sides, and for reasons which we would be happy to expand on more fully, at a later date if you so desire, we find as follows: