

THE BARBADOS



WORKERS' UNION

(REGISTERED 4th OCTOBER, 1941)

PRESIDENT GENERAL
LINDA P. BROOKS (MS.)

GENERAL SECRETARY
TONI MOORE

P.O. BOX 172
"SOLIDARITY HOUSE"
HARMONY HALL
ST. MICHAEL, BB 11000
BARBADOS

Our ref: DDP/001

31 January 2020

ADDENDUM

To Ruling on 15th July 2020

The Secretary
Employment Rights Tribunal
3rd Floor East
Warrens Office Complex
Warrens
ST. MICHAEL

Dear Madam

Re: Anthony Herbert V. Berger Paints Barbados Limited

I refer to the above-captioned matter, and the Employment Tribunal Hearing held on 28th October 2019 regarding same, where on instruction from the Chairman the parties were directed to enter a submission positing why the discretion allowed under section 32 of the Employment Rights Act should be exercised. Kindly accept the following as our submission in fulfilment of this instruction.

The Barbados Workers' Union as the accredited bargaining agent for employees of Berger Paints Limited was engaged on or around September 2014, by Mr Anthony Herbert, Technical Sales Representative, to assist him in responding to allegations being levelled against him by the company. The parties met on 11th September 2014 at the offices of the Barbados Employers Confederation, who were acting as the representative for the company, to address the allegations levelled against Mr Herbert. The parties agreed to adjourn the matter to permit

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the company to gather records pertinent to the discussions. Mr Herbert by way of letter dated 10th October 2014, received via courier, was terminated by the company without the meeting being reconvened.

The Barbados Workers' Union, as per industrial relations practice, contacted the Barbados Employers Confederation via telephone to ascertain what had transpired. The Barbados Employers Confederation stated that they must now investigate the matter. On the 31st October 2014, acting on behalf of Mr Herbert and not having received a response from the Barbados Employers Confederation, the Barbados Workers' Union wrote to the company appealing its decision to terminate the services of Mr Herbert. On the 3rd November 2014, the Barbados Workers Union officially wrote to Barbados Employers Confederation querying its involvement in the matter. On November 7th, 2014 the Barbados Workers Union received responses from the Barbados Employers Confederation and the Company. On 10th November 2014, the Barbados Workers' Union received a letter from the offices of Elliott D. Mottley & Co. advising that they were now the representatives of Berger Paints, and requested a meeting for 3rd December 2014. The parties met on 3rd December 2014 as proposed by the company to address this matter, just shy of two months after Mr Herbert's termination. After the initial meeting, the date of 16th December 2014 was proposed by the Barbados Workers' Union to continue discussions; however, the company representative, Elliott D. Mottley & Co via correspondence dated 8th December 2014, communicated that they were not available and proposed 12th January 2015, more than a month after the first meeting. The meeting was convened on the 12th of January 2015 and adjourned without the matter being concluded. On the 28th January 2015, the Barbados Workers Union received a letter from Elliott D. Mottley & Co proposing that the parties meet on 6th February 2015, the meeting was held as proposed. The parties did not conclude the matter and it was

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adjourned once more. After several calls and conversations with representatives of Elliott D. Mottley & Co, no new dates proposed, and the matter was sent for conciliation by the Barbados Workers' Union on the 11th August 2015. The conciliation was eventually held on 8th March 2016, due to the difficulty in obtaining responses from the company. The matter was referred to the Employment Rights Tribunal on 10th October 2017 after Labour Officer, Mrs Khama Salankey-Burke failed in her efforts to get the company to continue discussions.

The above summary represents the attempts made by the Barbados Workers Union to resolve this matter, utilising the agreed grievance protocols outlined in the Collective Labour Agreement. The extensive delays that occurred during the process were not the fault of Mr Herbert and were beyond his or his representative's control and we submit that Mr Herbert should not be denied the opportunity to have his matter adjudicated.

In addition to the Industrial Relations process being pursued by Mr Herbert's representative, he sought to engage the services of the Labour Department in his own right on or around late October or early November 2014. Mr Herbert was advised by the department after hearing his case, that he should continue to pursue the matter with the Barbados Workers' Union. Mr Herbert returned to the Labour Department again around January 2015 sighting that little progress was being made in his case and that they were lengthy delays between meetings. The department advised him, as was the custom, that if the Union did not resolve the matter, then they would seek to address it. After the matter was referred to the Labour Department by the union, Mr Herbert followed up with the officers there on the status of the case, when the matter was finally assigned to labour officer, Mrs Khama Salankey-Burke, he continued to follow up with her.

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Mr Hebert stated that he visited the department several times between 28th October 2019 and January 2020, engaging Senior Labour Officer, Mrs Judamay Williams-Bryan, to have his records retrieved, unfortunately at the date of writing Mr Herbert has not been successful in this regard. He claims that part of the problem with obtaining his records resided within the departmental procedures or lack thereof when his case was first reported. The Labour Department was not in the practice of opening files for everyone they saw and advised at that time. Officers used hardback books to make notes of matters, these books that did not necessarily form part of the official records of the department but personal reference points for the officers. The department at that time also did not issue any written correspondence to persons visiting the department with matters.

The Barbados Workers' Union, therefore, submits that Mr Herbert's matter was not referred to the Labour Department on 11th August 2015, but much earlier in October 2014, when he visited and presented the matter and sought the department's assistance. The Union contends that Mr Herbert must not be held responsible and made to suffer due to the absence of clear procedures and practices at the Labour Department for recording and documenting such matters or for how they are referred to the Employment Rights Tribunal, as this is beyond his control. The Union further contends that Mr Herbert, could not advance his matter beyond the Labour Department process, as there is presently no procedure to arrive at the Employment Rights Tribunal without going to the Labour Department.

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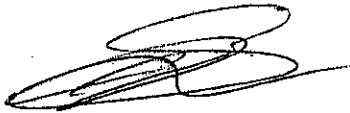
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In closing, the Barbados Workers' Union submits that Mr Herbert did all in his power to have his case heard and adjudicated promptly and should not be held accountable for procedural issues either at the industrial relations stage or the labour department.

Yours Sincerely

A handwritten signature in black ink, appearing to be 'Dwaine Paul', written over a horizontal line.

Dwaine Paul

for General Secretary

DP/

CC: Mr Anthony Herbert

Elliott D Mottley & Company