



**IN THE COURT OF APPEAL
TURKS AND CAICOS ISLANDS**

CL-AP 8/2021

CIVIL

BETWEEN

VANESHA PARKER

APPELLANT

AND

SKY CATERING LTD. DBA TOP OF THE COVE DELI

RESPONDENT

CORUM: THE HON MR JUSTICE K. NEVILLE ADDERLEY, JA,
PRESIDENT(Ag.)

THE HON MR JUSTICE STANLEY JOHN, JA

THE HON MR JUSTICE SIR IAN R WINDER, JA

APPEARANCES: ROBERT N D'ARCEUIL

APPELLANT

DEVON MCLEAN

RESPONDENT

HEARING DATE: 30 JANUARY, 2023

DELIVERY DATE: 3TH FEBRUARY, 2023



JUDGMENT

CL-AP 8/2021 VANESHA PARKER v SKY CATERING LTD. DBA TOP OF THE COVE DELI

Adderley, P (Ag)

1. The appellant appealed the decision of the Tribunal in this matter on several grounds. Ground (vi) was as follows:

“(vi) The Honourable Tribunal erred in law and departed from the due process set by its own precedents, when having determined that the Appellant had been constructively dismissed, it neglected or refused to convene a hearing to consider evidence of the compensation loss and other losses sustained by the Appellant, including any evidence of forward loss.”

2. Upon a review of the Record the following exchange took place between the President of the Tribunal and Mr D’Arceuil:

“President: If the Labour Tribunal decides that you are unfairly dismissed please state which of the following you would prefer; reinstatement to carry on working at your old job as before? Reengagement to start another job on a new contract with the same old employer or compensation to get an award of money? So, you will underline compensation to get an award of money.

Counsel D’Arceuil. Yes

President: Alright, but you do not tell the Tribunal what that compensation ought to be. We will give you that opportunity at the end of the trial we will ask you during your submissions and if we feel it necessary than we will ask you to submit what you feel you ought to be compensation.

Counsel D’Arceuil: Ok. I am guided.

President: We give that opportunity to both. Applicant and Defendant Alright?

Counsel D’Arceuil: Appreciate, appreciate that.”

3. No opportunity was given nor any reason given by the Tribunal why counsel for the Applicant was not given an opportunity to be heard when on the face of the record such a promise was made.
4. Counsel disagreed on whether or not it was an invariable practice to give such an opportunity but there was agreement that it was a practice although there was no statutory requirement to do so.

5. Since the statutory calculation and amount of compensation awarded is the gravamen of the appeal, not having been given the opportunity to be heard on that issue was a clear breach of one of the fundamental rules of fairness “*audi alteram partem*”.
6. For that reason we remit the matter to the Tribunal to give Counsel on behalf of the Applicant an opportunity to be heard as promised by the President of the Tribunal. Accordingly the Court will not consider the merits of the appeal at this time.
7. The appellant will have the costs of the appeal to be taxed if not agreed.

Adderley JA, President (Ag)



I agree

John, JA

I also agree

Sir Ian Winder, JA