



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

Wednesday, 10th April, 2024

Via Email

Via Email

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of **17 January, 2024** in the matter of is provided in accordance with section 75 of the Labour Act.

Decision

The Tribunal unanimously agreed with its factual findings and constructively agrees the Complainant was unfairly dismissed from his employment based on all of the tangible evidence on file. The Tribunal approves the Complainant claims for **Unfair Dismissal & Severance Pay**.

Orders/Awards

The Tribunal hereby orders the Respondent to pay the Complainant _____ for Severance Pay and in additional order of the Severance Pay valued at _____ for Unfair Dismissal. **The Total Compensation order in favour of the Complainant is _____**

Right to Appeal

Any person aggrieved by this Tribunal Decision, by virtue of the Labour Act may within **fourteen (14) days** of the date of this letter of notification, appeal this Decision. The appeal application must be made in writing and addressed to the Chairman of the Labour Appeals Tribunal. The appeal application should provide the reasons why you assert that the Tribunal has made an error of fact or Law.

Should an appeal not be filed within the prescribed timeframe, full payment of the award will become due within fourteen (14) days of the date of this letter.

Please direct appeals to:

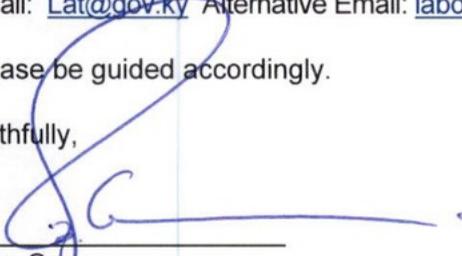
Secretary to The Labour Appeals Tribunal

2nd Floor Mid Town Plaza
Elgin Avenue, George Town
Grand Cayman KY1-9000
Cayman Islands
Tel: (345) 945-8960

Email: Lat@gov.ky Alternative Email: labourtribunal@dlp.ky

Please be guided accordingly.

Faithfully,


Kara Connor
Labour Tribunal Secretary



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

Department of Labour & Pensions

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LABOUR TRIBUNAL		
Chairpersons	Deputy Chairpersons	Members
James Kennedy Jennodell Myles Samantha Bennett Keith Myers	Cashema Clarke Michelle Coleman Angelita Edwards Nadine McBean Vincent Frederick	Nanalie Cover Pamela Duncan Denise Farrington Jaron Leslie Harwell McCoy Jr. Petrina Moore Shelly-Ann Davis Vaccianna Franklin Davina Ebanks

Matter:

Date of Hearing: 17 January 2024

Location: Via Zoom & Department of Labour Conference Room

Labour Tribunal Panel

Deputy Chairperson: Vincent Frederick

Chairperson: Jennodell Myles

Deputy Chairperson: Angelita Edwards

Acting Labour Tribunal Secretary: Kara Connor

Employee/Complainant:

Employer/Respondent:

Observers: It is noted that the Complainant had no legal representation and was not present at the Tribunal hearing. It is also noted that the Respondent was represented by Mr. Naul Bodden via Zoom.

Introduction

1. This is the Decision and Order of the Labour Tribunal ("the Tribunal") in respect of the hearing of a Complaint ("the Complaint") filed by _____ ("the Complainant") against _____ former employer, _____ ("the Respondent"). The Complaint was heard by the Tribunal on the 1/17/2024, commencing at 10:30am via the Labour Department's Conference room and by a Zoom virtual meeting in Grand Cayman.
2. The Complaint was filed in this matter by the Complainant on Jan 30, 2023. The Tribunal reviewed and found there was enough evidence on file to conclude a decision on this matter.

Background

The Tribunal noted that in the absence of the Complainant that the Respondent was present and decided to go ahead with hearing the matter as mandated in **Section 75 (6) of the Labour Act (6) which states: *If any party fails to attend the hearing, a Labour Tribunal shall nevertheless hear any other party attending, and shall proceed to consider the case on the basis of the complaint, the hearing and any written representations made by the party failing to attend.***

The Tribunal was eventually told that _____ who was part owner and the Managing Director of the company was deceased. However, the Tribunal noted that _____ who is also as a part owner & shareholder of the Company stated had little to no knowledge of the day to day operations and _____ will do his best to answer any questions.

The Tribunal noted that there were little to no direct evidence or information provided for this hearing. The Tribunal noted that the late _____ was the main person managing the day to day affairs of the company and was the person whom the Complainant had the interaction with that led to _____ dismissal. With the passing of _____ it was noted it would be extremely difficult to get answers to any questions put forward to the current Respondent's representative present. This was further compounded by the absence of the Complainant to offer verbal testimony and additional evidence to support _____ arguments.

The Tribunal also noted that an official employment contract was unprovided to the Labour Tribunal. However, there was an email received from the Respondent to the investigating labour officer detailing _____ termination. The Tribunal promptly proceeded into the practical matters of **Unfair Dismissal & Severance Pay** and faithfully shall rendered an absolute decision soundly based on the documentary evidence on official file and in light of all verbal arguments made into evidence from the representatives present.

The Tribunal took note of the following issues that affected the functional relation between the Respondent and the Complainant. It was noted that there were many mentions of other serious accusations that were deemed sensitive and it was determined by the Tribunal not to be relevant to factual to what may have led up to unfair dismissal. The Tribunal invariably took into consideration to focus on the bullet points below which includes but are unlimited to the following:

1. The absence of a written employment contract stating terms and conditions of employment.
2. The email outlining the termination letter of the Complainant.
3. The adverse behaviour of the Complainant & the Respondent upon appearing at the Respondent's private residence to discuss work related issues.
4. The effective date of the Complainants termination.
5. The Complainant 's "DLP form 1B" filed by the Complainant.
6. All other evidence on official file.

The aforesaid issues realistically are of the utmost importance accurately come to a Labour Tribunal decision.

The Tribunal unanimously determined the following timeline in reaching a conclusion:

Summary of Evidence

The Complainant in evidence claims that and another worker went to the Respondent's house to get pay for a week of worked that was already completed because was going home to country for the Christmas holidays and the airline ticket was expensive vacation. The Complainant stated only asked for the worked week pay because the team leader had already said to that would be unable top pay bonus this year. mentioned was let into the premises by and left after asking the question and told vulgarly that there was no money.

The Complainant claims that was surprised when got a call from the police on the at around 9:30AM from the Bodden Town Police Station but did not elaborate on the contents of the call. and was warned not to trespass back on the private property of the boss unless was told to come there. After returning from vacation on January 9, 2023, texted to let know was back to work. stated : received a call at 10:45AM from stating that : was suspended and told "Ok". At about 12:45PM, approximately two hours later, got a text from saying : was fired and permit was cancelled. is of the opinion has no idea why was dismissed from gainful employment. *The Tribunal notes that no official text message evidence to support this statement*

The Respondent in emailed termination letter stated that the Complainant illegally came to house and was demanding that could pay bonus, acting stranger and with face covered. The stated that : was afraid of the situation because it was two years since any employee came to house about work issues. After getting rid of the employee called the Bodden Town police to report the incident. *The Tribunal notes that no official police report in recorded evidence to support this statement.*

The Respondent noted that the Complainant was lying on time cards by stating worked on a day that did not, and left to Jamaica without permission and did not submitted a vacation request. also stated that did not know when the Complainant came back to the Islands. *The Tribunal notes that no official evidence was submitted to support this statement.*

The Tribunal correctly noted the Complainant's start date correctly from the DLP Summary of Facts sheet was on September 24, 2018, at and was gainfully employed in the suitable position of and earned per hour and averaging hours per typical week earning fortnightly. The Tribunal determined based on verbal & physical evidence that there was no distinct break in gainful employment until January 10, 2023, which is precisely the effective date of termination.

The Tribunal invited the Respondent's representatives if they could offer any other evidence that could determine what transpired that may have led to the Respondent dismissing the Complainant. None was forthcoming since the Respondent representative has no knowledge of the day to day operations of the company.

The Complainant was absent for the hearing which would have been an opportunity to provide other evidence. After carefully reviewing the remaining evidence, the Tribunal made note that no other additional evidence would be forthcoming.

The Tribunal unanimously concluded the reviewing of the present evidence respectfully submitted by the Respondent and the Complainant and properly rendered it's conscious decision accordingly.

The Law

PART IV – Unfair Dismissal

Unfair dismissal: general

49. (1) This Part shall only apply to an employee who has — (a) completed that person’s probation period; or (b) in the case of an employee not employed on probationary terms, completed three months of continuous employment with that person’s employer.

(2) Any termination by an employer of an employee’s employment shall be fair if it is within section 50 or 51.

Termination after fixed term of employment

50. For the purposes of this Part, an employee is not unfairly dismissed if that person’s employment is terminated at the expiration of a fixed term specified at the time of that person’s employment.

Dismissal for good cause

51. (1) Subject to subsections (2) and (3), a dismissal shall not be unfair if the reason assigned by the employer for it is — (a) misconduct of the employee within section 52(1); (b) that it is under section 52(3), namely misconduct following the receipt of a written warning; (c) that it is under section 53(2), namely failure of the employee to perform that person’s duties in a satisfactory manner following the receipt of a written warning; (d) that the employee was redundant; (e) that the employee could not continue to work in the position that person held without contravention (on that person’s or on the employer’s part) of a requirement of this or any other law; or (f) some other substantial reason of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held, and under the circumstances the employer acted reasonably. (2) Where the reason for the dismissal of an employee was that that person was redundant but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking, who were employed to perform work of the kind that person was employed to do and who have not been dismissed by the employer, and — (a) that those other employees do not hold the same status as the redundant employee for the purposes of Parts III to V of the repealed Immigration Law (2015 Revision) (Caymanian status, permanent residence and work permits); and (b) that the redundant employee was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in that person’s case, then, for the purposes of this Part, the dismissal shall be regarded as unfair. (3) The question whether an employer has acted reasonably for the purposes of this Part shall be determined in accordance with equity and the substantial merits of the case having regard to all the circumstances.

Termination for misconduct

52. (1) An employer may terminate forthwith the employment of an employee where the employee has been guilty of misconduct in or in relation to that person’s employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employee has — (a) conducted themselves in such a manner as clearly to demonstrate that the employment relationship cannot reasonably be expected to continue; (b) committed a criminal offence in the course of employment without the consent, express or implied, of the employer; (c) behaved immorally in the course of that person’s duties; or Labour Act (2021 Revision) Section 53 c Revised as at 31st December, 2020 Page 33 (d) is under the influence of a controlled drug (other than one lawfully prescribed by a health practitioner) or alcohol during the hours of that person’s employment. (2) Where an employee commits misconduct in or in relation to that person’s employment that is not sufficiently serious to justify that person’s employer terminating that person’s employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of any further misconduct. (3) Where an employee has been given a written warning under subsection (2), if that person, within twelve months following the receipt of the written warning,

commits misconduct of any kind in relation to that person's work, the employer may terminate the employment of the employee, or take such other action as may have been specified in the written warning, without further notice. (4) For the avoidance of doubt, misconduct includes, but is not limited to, absenteeism.

The Tribunal's Findings

The Tribunal after deliberating all evidence on official record, and taking into account the verbal testimonies of the attendees present, hereby finds the Respondent cannot suspend an employee and later turnaround and termination him in the same instance.

The Tribunal equally notes that there were no official response from the Respondent to the labour officer after numerous request to provide an official response to the Complainants claims and requested documents.

The Tribunal finds the Respondent failed in his duties to follow the Labour Act in governing the termination of any Employee. The Termination letter lacks sustains and effectively violates every aspect of Section 49, 50, 51 & 52 that simply cannot be justified.

The Complainant was not on probation and effectively served 4 years and 4 months under the employment of the Respondent. Please find below Section 49 which deals with Unfair Dismissal: General

49. (1) This Part shall only apply to an employee who has — (a) completed that person's probation period; or (b) in the case of an employee not employed on probationary terms, completed three months of continuous employment with that person's employer.

(2) Any termination by an employer of an employee's employment shall be fair if it is within section 50 or 51.

The Tribunal finds there was no evidence on file showing the Complainant was employed for a fixed period. Therefore the Tribunal determined the Complainant was a serving long-term employee. Please find below Section 50 which deals with Termination after fixed term of employment.

50. For the purposes of this Part, an employee is not unfairly dismissed if that person's employment is terminated at the expiration of a fixed term specified at the time of that person's employment.

The Tribunal finds there were no written warnings in evidence and the Complainant position was not considered to be redundant. Please find below Section 51 which deals with Dismissal for Good Cause.

51. (1) Subject to subsections (2) and (3), a dismissal shall not be unfair if the reason assigned by the employer for it is — (a) misconduct of the employee within section 52(1); (b) that it is under section 52(3), namely misconduct following the receipt of a written warning; (c) that it is under section 53(2), namely failure of the employee to perform that person's duties in a satisfactory manner following the receipt of a written warning; (d) that the employee was redundant; (e) that the employee could not continue to work in the position that person held without contravention (on that person's or on the employer's part) of a requirement of this or any other law; or (f) some other substantial reason of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held, and under the circumstances the employer acted reasonably. (2) Where the reason for the dismissal of an employee was that that person was redundant but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking, who were employed to perform work of the kind that person was employed to do and who have not been dismissed by the employer, and — (a) that those other employees do not hold the same status as the redundant employee for the purposes of Parts III to V of the repealed Immigration Law (2015 Revision) (Caymanian status, permanent residence and work permits); and (b) that the redundant employee was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in that person's case, then, for

the purposes of this Part, the dismissal shall be regarded as unfair. (3) The question whether an employer has acted reasonably for the purposes of this Part shall be determined in accordance with equity and the substantial merits of the case having regard to all the circumstances.

The Tribunal finds there was no evidence on record to support Termination for Misconduct. The fact that Complainant was not comfortable with employee coming to house for work related issues does not warrant cause for the automatic dismissal of an employee without due process. Please find below Section 52 which deals with Termination for Misconduct.

52. (1) An employer may terminate forthwith the employment of an employee where the employee has been guilty of misconduct in or in relation to that person's employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employee has — (a) conducted themselves in such a manner as clearly to demonstrate that the employment relationship cannot reasonably be expected to continue; (b) committed a criminal offence in the course of employment without the consent, express or implied, of the employer; (c) behaved immorally in the course of that person's duties; or Labour Act (2021 Revision) Section 53 c Revised as at 31st December, 2020 Page 33 (d) is under the influence of a controlled drug (other than one lawfully prescribed by a health practitioner) or alcohol during the hours of that person's employment. (2) Where an employee commits misconduct in or in relation to that person's employment that is not sufficiently serious to justify that person's employer terminating that person's employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of any further misconduct. (3) Where an employee has been given a written warning under subsection (2), if that person, within twelve months following the receipt of the written warning, commits misconduct of any kind in relation to that person's work, the employer may terminate the employment of the employee, or take such other action as may have been specified in the written warning, without further notice. (4) For the avoidance of doubt, misconduct includes, but is not limited to, absenteeism.

Decision

The Tribunal unanimously agreed with its factual findings and constructively agrees the Complainant was unfairly dismissed from his employment based on all of the tangible evidence on file. The Tribunal approves the Complainant claims for **Unfair Dismissal & Severance Pay**.

Orders/Awards

The Tribunal hereby orders the Respondent to pay the Complainant _____ for Severance Pay and in additional order _____ of the Severance Pay valued at _____ for Unfair Dismissal. **The Total Compensation order in favour of the Complainant is**

Right to Appeal

The Tribunal's decision, enforcement and appeals are governed by section 75 to 78 of the Labour Law.

Section 78(1)

Any person aggrieved by:

- (a) any decision of a Labour Tribunal upon a complaint where the award exceeds five hundred dollars;
- (b) the service of a remedial notice;

- (c) any decision of a Labour Tribunal that his dismissal was fair;
- (d) any refusal of a Labour Tribunal to register an overtime agreement; or
- (e) any decision of a Labour Tribunal that no award should be made,

may, within(14) fourteen days of notification of the decision or service of the notice, appeal to the Appeals Tribunal:

Provided that an employee may appeal an award of less than five hundred dollars where he claims that the award have exceeded five hundred dollars.

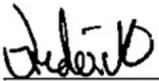
(2) An appeal under subsection (1) is brought by giving notice in writing to the chairman of the Appeals Tribunal.

(3) The giving of a notice of appeal pursuant to subsection (2) operates as a stay upon any award made by a Labour Tribunal.

(4) The notice of appeal under subsection (2) shall also be served upon a Labour Tribunal and in the case of an appeal from a decision of a Labour Tribunal upon a complaint, upon all persons who were invited to appear before a Labour Tribunal under section 75(6).

(5) Upon receipt of a notice the Chairman of the Tribunal shall fix a date for the hearing of the appeal, being not less than one month nor more than three months from the date of his receipt of the notice of appeal, and shall give notice of that date forthwith to the appellant and to all parties who were entitled to receive the notice of appeal pursuant to subsection (4).

(6) All persons entitled to receive the notice of appeal pursuant to subsection (4) shall be entitled to appear at and be heard upon the hearing of the appeal, or upon any adjourned hearing.



Vincent Frederick
Deputy Chairperson