



# Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

11 July 2024

Via Email

Via Email

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of **25 June, 2024**, in the matter of is provided in accordance with section 75 of the Labour Act.

## Decision

1. The Tribunal unanimously agrees that the Complainant was unfairly dismissed.

## Orders/Awards

Severance:

Unfair Dismissal Compensation:

**TOTAL DUE:**

## 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

2<sup>nd</sup> Floor Mid Town Plaza

Elgin Avenue, George Town

Grand Cayman KY1-9000

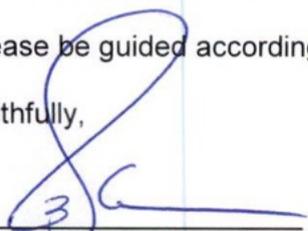
Cayman Islands

Tel: (345) 945-8960

Email: [Lat@gov.ky](mailto:Lat@gov.ky) Alternative Email: [labourtribunal@dlp.ky](mailto:labourtribunal@dlp.ky)

Please be guided accordingly.

Faithfully,

  
Kara Connor

Labour Tribunal Secretary

2<sup>nd</sup> Floor, Mid Town Plaza, Elgin Avenue, P.O. Box 2182 George Town  
George Town, Grand Cayman KY1-1105

Direct Ext: (345) 244-4015 Direct Email: [kara.connor@gov.ky](mailto:kara.connor@gov.ky), Labour Tribunal General Email: [labourtribunal@dlp.gov.ky](mailto:labourtribunal@dlp.gov.ky)



**Labour  
Tribunal**  
CAYMAN ISLANDS GOVERNMENT

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LABOUR TRIBUNAL		
Chairpersons	Deputy Chairpersons	Members
James Kennedy Jennodell Myles Samantha Bennett(Resigned) Keith Myers Nick Hoffman	Noel Webb Cashema Clarke Michelle Coleman Angelita Edwards Nadine McBean Vincent Frederick	Nanalie Cover Pamela Duncan Gary Berry Anya Rankin-Christian Luisa Hernandez Roxanne Basham-Ebanks Audrey Pendergast Vaccianna Franklin Davina Ebanks

**Matter:**

**Date of Hearing:** 25 June 2024

**Location:** Via Zoom & Department of Labour Conference Room

**Labour Tribunal Panel**

**Chairperson:** Jennodell Myles  
**Deputy Chairperson:** Vincent Frederick  
**Member:** Gary Berry

**Acting Labour Tribunal  
Secretary:** Kara Connor

**Employee/Complainant:** [REDACTED]

**Employer/Respondent:** [REDACTED]

**Observers:**

It is noted that the Complainant was in attendance and the Respondent was absent.  
There were no legal representative present at the Tribunal hearing for either party.

## 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 Labour Tribunal on the 6/25/2024, 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 May 16, 2023. The Labour Tribunal reviewed and found there were sufficient evidence on file to start a decision on this matter.

## Background

The Labour Tribunal noted that in the absence of the Respondent it was decided there was enough evidence on file to go ahead with hearing the matter as mandated by **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 Labour Tribunal was informed that the Respondent was emailed in advance of the Labour Tribunal hearing. However, no corresponding email was received concerning the matter.

The Complainant was hired as an on. and reported directly to the The Complainant earned a basic salary of annually/ per week, which was paid every two weeks working Monday to Friday from

On March 16, 2023, the Complainant proceeded to visit the to check on difficulties was having with was given a sick note with special instructions.

On May 1, 2023 a termination letter was written by the Respondent dismissing the Complainant from employment which was officially delivered to on the morning of May 2, 2023.

On June 26, 2023 the produced a which rightfully diagnosed with having The report detailed the visit and also listed suggestions for the Respondent to undertake in the best interest of the safety and of the Complainant.

On August 10, 2023 the Labour Department sent an email to the Respondent notifying them of the Complainant on file against them and request the following information:

1. A copy of the termination letter issued to the Complainant,
2. A copy of the final pay statement issued to the Complainant,
3. A copy of the Complainant's 'employment contract / Statement of working conditions,
4. A copy of any warning letter issued to the Complainant within the last twelve months.

On September 26, 2023 an email was sent to the Labour Officer in reply to information requested.

On April 16, 2024 the Labour Officer determined that the case should be sent to the Labour Tribunal to be heard after further mediation into the matter was not practical.

On May 3 2024 the Secretary of The Labour Tribunal Secretary sent out a Zoom hearing notice to the parties scheduling a hearing for June 19, 2024, which was later rescheduled for June 25, 2024.

On June 25, 2024 the Labour Tribunal heard the meeting in the absence of the Respondent.

The Labour Tribunal promptly proceeded into the practical matters of **Unfair Dismissal** and faithfully rendered an absolute decision soundly based on the documentary evidence on file.

*The Labour Tribunal took note of the following issues that affected the functional relation between the Respondent and the Complainant. It was noted that there were mentions of serious work place violations of safety protocols that may have led to the ill-health of the Complainant. The Labour Tribunal invariably noted the Department of Labour inspected the premises and found no evidence of safety violations. The Labour Tribunal consideration the bullet points below which includes but are unlimited to the following:*

1. The Complainant's and the advice written therein.
2. The report provided by the
3. The termination letter on file.
4. The Respondent's position for providing safety equipment to the Complainant.
5. The email exchange between the Labour Officer and the Respondent.
6. The sudden and adverse manner in which the Complainant was dismissed from employment.
7. The effective date of the Complainant's termination.
8. The supporting evidence filed by the Complainant on the DLP form 1B.
9. The verbal testimony of the Complainant.
10. All other evidence on official file.

The aforesaid issues were determined to be of utmost importance to conclude a Labour Tribunal decision.

The Labour Tribunal unanimously determined the above timeline in reaching its conclusion:

#### Summary of Evidence

The Complainant proceeded and submitted a claim to the Labour Department to be compensated for Unfair Dismissal. However, at the hearing he was unsure if had received Severance Pay. *The Labour Tribunal noted that the Complainant was unsure of whether had been paid for Severance Pay. The Chairman took the necessary time to break-down the Complainant's last payment slip which pointed out included Severance Pay. I was asked if the net amount on the pay slip was the exact amount that was received into I bank account and agreed with a resounding "Yes". The Chairman then stated that if I can now clearly see that was paid for Severance Pay and if was in agreement. The Complainant responded "yes". The Tribunal stated it would continue with the claim for Unfair Dismissal only.*

The Complainant in verbal evidence claimed that was concerned about health after being exposed to kerosene fumes at place of employment. After being exposed to the toxic fumes over time, began to feel sick and had to seek help. The Complainant went and engaged a at the at the and was eventually treated and released with a sick note outlining be provided respiratory/special masks. *The Labour Tribunal noted the Complainant stated told the that worked around kerosene oil and the fumes were the most likely cause of current condition. The Labour Tribunal also noted that was given and a note which also outlined some special equipment to be used at work. The Complainant claimed this advice was not followed up on by the Respondent which led to refusing to work around strong chemicals without the required safety equipment.*

The Complainant also noted that told the Body Shop Manager to provide with a mask which was not given. He also noted that tried to purchase one personally after being refused/ignored by the Respondent. However, stated that the safety mask and breathing apparatus were extremely expensive and could not afford one. *The Labour Tribunal noted the seriousness of this statement. The Labour Tribunal eventually noted that the Labour Officer had the*

*same concerns and had undertaking for a labour inspection to be conducted on the premises of the Respondent which found nothing wrong.*

The Labour Tribunal noted the Complainant stated [REDACTED] was unable to perform [REDACTED] duties and stayed away from the toxic chemicals. This led to [REDACTED] sitting idle most of the day and doing light work that didn't involved the handling of the strong chemicals. *The Labour Tribunal noted that this would be a normal response for the Complainant to have undertake until the Respondent had full-filled the advice as outlined in the sick note given to [REDACTED] from the HSA.*

The Complainant stated [REDACTED] came to work as usual on May 2, 2023 and was told by the [REDACTED] Manager not to report into work but to come with [REDACTED] to office. [REDACTED] was then told [REDACTED] was fired and was given [REDACTED] termination letter with immediate effect dated May 1, 2023. The Complainant stated [REDACTED] was shocked and was told [REDACTED] needed to turned over company keys and uniforms as soon as possible. *The Labour Tribunal noted that there were no written warnings on file, no verbal statements on record from the Respondent. The Respondent admitted in an email sent September 26, 2023 that no warnings were written up and the Respondent was unable to provide a copy of them. However, the Respondent did state a handful of reasons why the employee may have ultimately been terminated.*

The Labour Tribunal noted the medical report dated June 26, 2023 that detailed the Complainant's medical diagnosis and also detailed what actions would be needed to mediate the negative conditions caused from possibly working around Kerosene and stop the Complainant from inhaling the fumes. *The Labour Tribunal noted there were no evidence on file to state whether the Respondent had followed such advice. However, the Complainant again confirmed that [REDACTED] was not provided the special mask/respirator that was needed to stop the fumes from being inhaled. [REDACTED] went on to state that we was given Covid-19 type mask (N95) which was not designed to dissipate the toxic fumes coming from the Kerosene oil and those mask were useless.*

The Respondent representatives were absent for the hearing which would have been a great opportunity to provide other evidence before the Labour Tribunal. After carefully reviewing the remaining evidence, the Labour Tribunal made note that no other additional evidence would be need to render a decision.

The Labour Tribunal unanimously concluded the reviewing of the present evidence respectfully submitted by the Respondent representatives and the Complainant and properly submitted 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 Labour Tribunal after deliberating all evidence on official record, and after hearing the testimony of the Complainant, hereby finds the Respondent unlawfully terminated the Complainant without any regards to Section 49 (1)& (2); Section 50; Section 51 & Section 52 of the Cayman Islands Labour Act.

The Labour Tribunal equally notes that the Complainant was immediate dismissed with extreme prejudice from his position of employment with any proper care taken by the Respondent to follow the Labour Act as required before dismissing an employee. The Labour Tribunal also found that no written warnings were on record that could explain the sudden termination of the employee and the Respondent admitted in their email that no written warnings were on file because none was written. The Respondent went on to list a few reasons why the employee was terminated and the Labour Tribunal found these reasons could've been possible caused of termination but weren't properly documented as outlined by the Respondent to do under Section 51 & 52 of the Labour Act.

The Labour Tribunal finds the Respondent willfully terminate the Complainant but failed to pay for Unfair Dismissal. The evidence in the email between the Labour Officer and the verbal testimony of the Complainant supports claim of Unfair Dismissal. This effectively violated every aspect of Section 49, 50, 51 & 52 of the Labour Act that simply cannot be justified as reasonable and just.

The Complainant was not on probation and effectively served years 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 Labour Tribunal finds the employment contract in evidence clearly showed the Complainant was not 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 Labour Tribunal finds there were no defence to any section of the Labour Act on file on behalf of Respondent. In fact, the Labour Tribunal found no good cause as to why the Complainant was ultimately terminated and took special consideration that the dismissal was directly related to the lack of providing the proper safety equipment needed for the Complainant to safely carry-out his duties. This situation was beyond the control of the Complainant and he should not have been predisposed in the manner without proper guidance from H/R in following the Labour Act. 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 Labour Tribunal finds there was no evidence on record to support Termination for Misconduct. The fact that there was a break-down in the Complainant's performance was squarely due to the Respondent not providing the correct safety equipment needed for the Complainant to efficiently perform duties. The email evidence from the Respondent clearly indicated it was the Respondent's fault that proper records were not done and on file to support the termination of the Complainant. The Labour Tribunal finds that the sudden termination should not have happened without direct

evidence showing cause for the automatic dismissal of an employee. 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 Labour Tribunal unanimously agreed with its factual findings and constructively agrees the Complainant was unfairly dismissed from employment based on all of the tangible evidence on file. The Labour Tribunal approves the Complainant claims for **Unfair Dismissal**.

#### Orders/Awards

The Labour Tribunal hereby orders the Respondent to pay the Complainant KYD\$2,800.00 for Unfair Dismissal for 7 years of continued employment.

**1. The total compensation order in favour of the Complainant for Unfair Dismissal 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 ■ 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.



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Vincent Frederick  
Deputy Chairperson  
08-Jul-24