



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

15th October, 2024

[REDACTED]
Via Email

[REDACTED]
Via Email

Decision

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of **22nd October, 2024**, in the matter of [REDACTED] is provided in accordance with section 75 of the Labour Act.

Decision

The Labour Tribunal unanimously agreed with its factual findings, concluding that the Complainant is accountable for [REDACTED] own constructive dismissal, which was not the fault of the Respondent.

Order

The Labour Tribunal has dismissed the claim for unfair dismissal and ordered that no compensation be granted.

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.

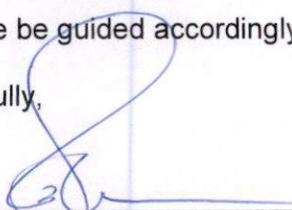
Please direct appeals to:

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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P.O. Box 2182 George Town

George Town, Grand Cayman KY1-1105

Direct Ext: (345) 244-4015 Direct Email: kara.connor@gov.ky

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LABOUR TRIBUNAL

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

Matter: [REDACTED]

Date of Hearing: 22 October 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: The Complainant was in attendance, while the Respondent was represented by [REDACTED]. The Labour Tribunal hearing was attended by no legal representatives from 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 [REDACTED] ("the Complainant") against [REDACTED] former employer, [REDACTED] ("the Respondent"). The Complaint was heard by the Labour Tribunal on the 10/22/2024, 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 September 24, 2023, The Labour Tribunal reviewed and found there were sufficient evidence on file to start decision on this matter.

Background

The complainant indicated that [REDACTED] began working as a [REDACTED] at [REDACTED] on [REDACTED]. [REDACTED] claims [REDACTED] was unlawfully terminated on [REDACTED] and is also entitled [REDACTED] for a year. [REDACTED] stated that [REDACTED] was in a predicament that necessitated paying a rent deposit and needed [REDACTED] salary. [REDACTED] stated [REDACTED] was only paid [REDACTED] which was less than [REDACTED] expected and could not cover the rent deposit. [REDACTED] claimed that this caused [REDACTED] to become extremely stressed, and [REDACTED] informed [REDACTED] boss that [REDACTED] could no longer work. This eventually led to [REDACTED] termination for misbehavior after neglecting to show up to work for a full week and failing to adequately apologize for [REDACTED] actions.

The complainant typically earns roughly [REDACTED] each week at [REDACTED] per hour.

On September 24, 2023, the Complainant freely filed an official report with the Department of Labour and Pensions, presumably seeking potential benefits for unfair dismissal, unpaid wages, and gratuity payments.

On October 10, 2024, the Labour Tribunal graciously presided over the official meeting, which was attended by all parties.

The Labour Tribunal quickly addressed the practical issues of **Unfair Dismissal**, stating that overdue salaries and gratuity payments would be set aside because they were outside the scope of the Tribunal's authority. The Labour Tribunal issued an absolute verdict based on both parties' verbal testimony and all documentary material on file.

The Labour Tribunal took note of the following issues that affected the functional relation between the Respondent and the Complainant. The Labour Tribunal invariably noted the verbal testimonies and took into consideration to focus on the bullet points below which includes but are unlimited to the following:

1. The respondent's financial situation and after the Covid-19 pandemic.
2. The Complainant's verbal evidence of events and his behavior prior to termination.
3. The Respondents' willingness to resolve disagreements and allow business to go normally.
4. The Complainant's work permit cancellation timeline.
5. The cause and manner in which the Complainant was fired from his job.
6. The effective date of the Complainant's termination.
7. The Complainant filed supporting evidence on DLP form 1B.
8. All verbal and physical evidence are in official file.

The aforementioned issues are critical to appropriately concluding a Labour Tribunal decision.

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

Summary of Evidence

The Complainant in [redacted] evidence claims that [redacted] was unfairly dismissed from [redacted] local employment as a [redacted]. The Complainant allegedly claimed [redacted] was overdue [redacted] wages that [redacted] needed urgently for a rent deposit and told the Respondent of the situation. [redacted] claimed to have only been given part payment and it was well short of what was needed to secure the rent deposit. [redacted] WhatsApp the Respondent and told [redacted] that [redacted] was stress and couldn't work any longer.

The Complainant testified that [redacted] became irritated, left [redacted] job, and did not return. [redacted] claimed that [redacted] went to WORC and cancelled [redacted] own work permit because [redacted] had no intention of returning and was looking for job elsewhere. [redacted] has since been hired and is working at another business in the Cayman Islands.

The Respondent consistently asserted that it was a difficult period for the business, and [redacted] hired the Complainant in [redacted] with the expectation that the Cayman Islands Government would reopen the country's borders to tourists following the Covid-19 outbreak. Things did not proceed as anticipated, and commerce was quite slow. [redacted] ended [redacted] owing staff members pay and gratuities, which were eventually paid back. [redacted] added that the Complainant sought [redacted] outstanding earnings, but at the time [redacted] could only afford to pay [redacted] [redacted] which the Complainant found unsatisfying. [redacted] testified that the Complainant WhatsApp [redacted] phone and informed [redacted] that [redacted] was stressed and couldn't work. The Respondent replied [redacted] was coming over to talk about the matter. When [redacted] arrived, [redacted] observed that the Complainant was silent. [redacted] gathered [redacted] bags and marched out the door, abandoning [redacted] post.

The Respondent stated the reasons for late payments, noting that the Complainant was well aware of the company's financial troubles and so could not be paid on a regular basis. [redacted] stated that the short period of time was not doable since [redacted] needed to budget the additional monies in advance.

The Respondent stated that [redacted] continued to WhatsApp the Respondent when [redacted] failed to show up for work the next day(s). [redacted] said that [redacted] messages were read but went unanswered. However, on September 22, 2023, [redacted] met with the Complainant to give [redacted] the opportunity to apologize for [redacted] wrongdoings and return to work the following Monday, or face instant termination. [redacted] stated that the response was not what was expected and that [redacted] had no choice but to fire the Complainant on September 22, 2023 for leaving [redacted] position on September 15, 2023.

The Complainant and Respondent were present for the evidentiary hearing and provided extensive verbal testimony, which the Labour Tribunal sincerely appreciated. After carefully evaluating the remaining information, the Labour Tribunal determined that no additional evidence would be required to accurately give an informed conclusion.

The Labour Tribunal unanimously ended its evaluation of the current evidence respectfully presented by the Respondent and the Complainant and appropriately filed a thoughtful conclusion.

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

After debating the evidence on the official record, the Labour Tribunal concludes that the Complainant was constructively fired from ■■■ job due to ■■■ own acts. The Labour Tribunal underlined the empirical data in private deliberations and conveniently determined that it was legitimate.

The Labour Tribunal carefully evaluated the comparative merits of all material on file and spoken testimony during the hearing to decide the basis for termination, including the fact that the Complainant was the one who left [REDACTED] work with the intention of never returning. This was reinforced when [REDACTED] read the WhatsApp messages and did not answer, made explicit admissions of [REDACTED] decision not to return to work for the Respondent, and took the initiative to proactively and aggressively cancel [REDACTED] own work permit.

Decision

The Labour Tribunal unanimously agreed with its factual findings, concluding that the Complainant is accountable for [REDACTED] own constructive dismissal, which was not the fault of the Respondent.

Orders/Awards

The Labour Tribunal has dismissed the claim for unfair dismissal and ordered that no compensation be granted.

Right to Appeal

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

Section 78(1)

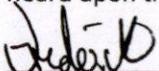
Any person aggrieved by:

- (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
15-Nov-24

