



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

Thursday, 06 October 2022

Via Email

Via Email

Ref: 200838!

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of 5 March, 2021 **13 September 2022**, in the matter of _____, is provided in accordance with section 75 of the Labour Act.

Decision

The Tribunal notes that the Complainant was employed for less than one year and would therefore not be entitled to make a claim for Severance Pay under Section 40 of the Labour Act.

An Employee in the Cayman Islands has a statutory right not to be unfairly dismissed by their Employer. This right is contained in the Labour Act. For a dismissal to be considered fair, the dismissal must fall within Section 50 and 51 of the Labour Act, otherwise it is unfair. This is made clear by Section 49 of the Labour Act.

Based on the summary of the Complainant's evidence, and lack of evidence from the Respondent, the Tribunal finds that the dismissal was unfair.

The Tribunal finds that the dismissal was without cause, and did not fall within Section 50 or 51 of the Labour Act, therefore the Complainant is entitled to compensation for being unfairly dismissed from _____ employment.

Orders/Awards

The Complainant is awarded compensation for unfair dismissal of one weeks wage in the amount of KYD\$ _____ and hereby Orders the Employee to pay this amount in full within 14 days of the date of this decision.

The Tribunal further strongly recommends the full payment of the Complainant's prorated vacation entitlement in the amount of \$ _____, as well as the payment of 1 week's salary lieu of notice in the amount of \$ _____ as these are statutory entitlements of the Law that should have been honored and complied with upon termination.

The Tribunal recommends that the relevant agency investigate the infractions of _____ employing work permit holders on a commission only basis, and the more damaging infraction of having work permit holders pay for their _____ in a practice seemingly referred to as "_____".

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.



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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

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LABOUR TRIBUNAL Gazette Issue 15/22		
Chairpersons	Deputy Chairpersons	Members
Donnette Goddard	Michelle Coleman Cashema Clarke Angelita Edwards Nadine McBean Petrina Moore	Nanalie Cover Pamela Duncan Vincent Frederick Jaron Leslie Harwell McCoy

Proceedings

Matter:

Date of Hearing: September 13, 2022

In attendance: **Labour Tribunal Panel**
Angelita Edwards, Acting
Chairperson
Vincent Frederick, Member
Denise Farrington, Member

Kara Connor, Secretary

For Employee: , Complainant

For Employer: Not Present

The proceedings were recorded

Introduction

1. This is the Decision and Order of the Labour Tribunal ("the Tribunal") in connection with the hearing of a Complaint ("the Complaint") filed by _____ ("the Complainant") against _____ ("Employer or Company").
2. The Complaint was heard by the Tribunal on September 13, 2022 commencing at 10:00am by virtual meeting via Zoom.
3. The Tribunal has reviewed and carefully considered the documentation filed in connection with this matter and which is referred to in this Decision. In reaching this Decision, the Tribunal has also reviewed and carefully considered the relevant sections of the Cayman Islands Labour Act ("the Labour Law").

BACKGROUND AND SUMMARY OF EVIDENCE

4. The Complainant was employed by the Respondent _____ from January 11, 2019, until approximately August 7, 2019 when the work permit ended, however, evidence received demonstrates that the work permit was cancelled effective, January 13, 2020. The Tribunal has no explanation for the apparent 5 month delay in the updating of WORC'S database, however there is enough undisputed evidence to substantiate that the Complainant's work permit was in fact cancelled by the Employer.
5. There was no employment contract.
6. The Complainant's evidence is that in the beginning _____ was paid commission only, due to the _____ being slow her salary fluctuated and oftentimes _____ received no take home pay. The Complainant's evidence is that the situation evolved to where _____ was required to pay "_____ " in the amount of \$ _____ per week to the Employer. The Complainant stated that _____ did not know that this was in contravention of the Law and abided by the Employer's demands as _____ needed _____ job to support _____ children, however often times due to the slow nature of the _____ found _____ with no money and having to borrow funds to pay the employer for the _____
7. The Complainant's evidence is that _____ requested from the Employer to take vacation leave so that _____ could prepare _____ children for back to school, and requested from the Employer to waiver the _____ for the weeks leading up to _____ vacation so that _____ would be able to save some money for _____ planned trip, and _____ would resume paying upon _____ return. The Complainant's evidence is that the Employer did not have an issue with this arrangement and _____ departed for _____ scheduled trip.
8. The Complainant's evidence is that whilst away, _____ received a phone call from a colleague that they were suspicious that _____ work permit would be cancelled, upon returning to island _____ did not have difficulty passing through immigration at the Airport but was advised to visit the Immigration Department, it was at this time that _____ was informed that _____ work permit had been cancelled and _____ status on island needed to be regulated.
9. Upon questioning, the Complainant advised that _____ successfully obtained a new work permit with a different employer in September 2019 and _____ is currently in a totally different field of work.
10. The Complainant's evidence is that _____ received no reasoning for why _____ work permit was cancelled but speculates it was cancelled due to _____ leading up to _____ planned travel. The Tribunal notes that there is no termination letter.
11. The Complainant's evidence is that _____ received no vacation pay for the period _____ was employed with _____, nor did _____ receive prior notice that _____ would be terminated or _____ work permit cancelled, despite this the work environment was fairly harmonious with the only tension and difficulty being the lack of a consistent weekly salary and ever looming liability for _____

OBSERVATIONS and DECISION

1. Section 75(6) of the Act reads: "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 notes that the Complainant was employed for less than one year and would therefore not be entitled to make a claim for Severance Pay under Section 40 of the Labour Act.

An Employee in the Cayman Islands has a statutory right not to be unfairly dismissed by their Employer. This right is contained in the Labour Act. For a dismissal to be considered fair, the dismissal must fall within Section 50 and 51 of the Labour Act, otherwise it is unfair. This is made clear by Section 49 of the Labour Act.

Based on the summary of the Complainant's evidence, and lack of evidence from the Respondent, the Tribunal finds that the dismissal was unfair.

The Tribunal finds that the dismissal was without cause, and did not fall within Section 50 or 51 of the Labour Act, therefore the Complainant is entitled to compensation for being unfairly dismissed from employment.

Orders/Awards


12. The Complainant is awarded compensation for unfair dismissal of one weeks wage in the amount of KYDS _____ and hereby Orders the Employee to pay this amount in full within 14 days of the date of this decision.

The Tribunal further strongly recommends the full payment of the Complainant's prorated vacation entitlement in the amount of _____ as well as the payment of 1 week's salary lieu of notice in the amount of \$ _____ as these are statutory entitlements of the Law that should have been honored and complied with upon termination.

The Tribunal recommends that the relevant agency investigate the infractions of employing work permit holders on a commission only basis, and the more damaging infraction of having work permit holders pay for their work station in a practice seemingly referred to as ' _____

Appeals

13. The Tribunal's decision, enforcement and appeals are governed by section 75 to 78 of the Labour Act. Any persons aggrieved by this Tribunal decision by virtue of section 78 of the Labour Law may, within 14 days of notification of the decision, or service of notice, appeal to the Appeals Tribunal.


Angelita Edwards, Deputy Chairperson

(Acting Chairperson)



