DEPARTMENT OF LABOUR & PENSIONS
2nd Floor, Mid Town Plaza, Elgin Avenue
George Town, Grand Cayman
P.O. Box 2182 George Town
Grand Cayman, Cayman Islands KY1-1105
Phone: 1(345)945-8960 Fax: 1(345)945-8961

LABOUR TRIBUNAL

Lorna Hampson, *Chairperson*	**James Kennedy,** *Deputy Chairperson*	**Angelita McLean,** *Member*	**Marie Reinke,** *Member*	**Anna Pereira Johnson,** *Member*
Shaun Cockle, *Chairperson*	**Halcy Lofters,** *Deputy Chairperson*	**Edward Solomon,** *Member*	**Kent McTaggart,** *Member*	**Williams P. Ebanks,** *Member*
Samuel Banks, *Chairperson*	**Jennodell Myles,** *Deputy Chairperson*	**Isatou Sey,** *Member*	**Dana Brandon,** *Member*	**Clarence Bothwell,** *Member*
Robert H. Jones, *Chairperson*	**Martha Rankine,** *Deputy Chairperson*	**Noel Webb,** *Member*	**Sheena Sigsworth,** *Member*	**Felicia Deslandes,** *Member*
Kimbert Solomon, *Chairperson*	**Phillip D. Ebanks,** *Deputy Chairperson*	**James Whittaker,** *Member*	**Laura Young,** *Member*	**Deena Rivers,** *Member*
Chanda Glidden, *Chairperson*	**Ludivene Dilbert,** *Deputy Chairperson*	**Keisha James,** *Member*	**Peter Schmid,** *Member*	**Anna Pereira Johnson,** *Member*

DECISION

Case Title: [redacted] **v Chrissie Tomlinson Memorial Hospital**

Date of Hearing: June 17th, 2014
10:00am

In Attendance: **Labour Tribunal Panel**
Kimbert Solomon, *Chairperson*
Marie Reinke, *Member*

Secretary:
Kara Connor

For Employee:
[redacted]
The Complainant was not legally represented
The Complainant called no witnesses

For Employer:
[redacted]
The Complainant was not legally represented
The Complainant called no witnesses

The hearing was closed to the press and the public

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 Chrissie Tomlinson Memorial Hospital ("CTMH" or "the Employer"). The Complaint was heard by the Tribunal on the 17th day of June 20142, commencing at around 10:00 am in the Large Conference Room of the Department of Labour and Pensions, Midtown Plaza, Elgin Avenue, Grand Cayman.

Introduction

The Complaint was filed in this matter by the Complainant on 18th November 2013 and the Tribunal has reviewed and carefully considered the Complaint and reviewed and carefully considered the representations made on behalf of the Employer.

In reaching this decision the Tribunal has also reviewed and carefully considered the sworn evidence of the Complainant and the sworn evidence of [redacted] who appeared for the Employer. The Tribunal has also reviewed the relevant sections of the Cayman Islands Labour Law (2011 Revision).

Summary of Evidence

The material facts are as follows;

(a) The Complainant was employed with the Employer from December 28th 2010 to November 20th 2013;
(b) There were no previous Warning Letters or otherwise past instances of performance related issues submitted by the CTMH against the Complainant;
(c) On or around November 12th, 2013 there was an incident at the CTMH wherein a medical procedure was attempted using a medical instrument which was found by a Doctor during the procedure to allegedly contain the fecal matter of another patient;
(d) The alleged fecal matter was believed to have been left on the instrument from a prior Emergency patient of the CTMH and the decision was taken by the CTMH that the Complainant was the employee responsible for cleaning the instrument and thus was at fault;
(e) No DNA analysis was conducted on the alleged fecal matter so as to determine if the alleged fecal matter belonged to the patient that was undergoing the medical procedure when the alleged fecal matter was discovered;
(f) No DNA analysis was conducted on the alleged fecal matter so as to determine if the alleged fecal matter belonged to the patient that had undergone the Emergency medical procedure prior to the patient referred to under paragraph (e) above;
(g) No DNA analysis was done whatsoever, as the alleged fecal matter in question was discarded by another employee at CTMH – not the Complainant;
(h) Both the representative for CTMH and the Complainant agreed that the failure to test the alleged fecal matter for DNA was in breach of proper protocol;
(i) The representative for CTMH also submitted to the Tribunal that the CTMH had also failed to follow proper protocol in the handling of this incident as set out at Hospitals in the United Kingdom where [redacted] was previously employed;
(j) The representative for CTMH also intimated to the Tribunal that the CTMH had not conducted a proper investigation into the incident;

(k) CTMH did not call any witnesses;
(l) The Complainant earned a salary of CI$3,000 per month.

Decision

The Tribunal finds that the CTMH unfairly dismissed the Complainant.

In reaching the above-mentioned decision the Tribunal fully appreciates the seriousness of the allegation made against the Complainant that resulted in [redacted] being dismissed from [redacted] employment. Likewise the Tribunal appreciates the risk of financial and reputational loss that the occurrence of such an alleged incident could have against CTMH.

However, the alleged fecal matter was inexplicably discarded by an employee other than the Complainant, and consequently no DNA examination could be undertaken of the alleged fecal matter such that it could safely be determined to which patient it belonged. Clearly if the alleged fecal matter belonged to the patient that was undergoing the procedure at the time of its discovery, then the Complainant could not be accused of failing to properly clean the medical instrument. Whereas if the alleged fecal matter was found to have belonged to the patient that had undergone an Emergency procedure prior then someone undoubtedly failed to clean the medical instrument properly.

It is in view of the above, and after considering the evidence and submissions of both the Complainant and representative of CTMH that the Tribunal feels that CTMH did not conduct a thorough and as independently verifiable as possible investigation into the incident, and therefore did not have cause to terminate the Complainant, nor, and in any event did the CTMH act reasonably in terminating the employment of the Complainant.

Orders/Awards

The termination of the employment was unfair, and the Employer is hereby Ordered to pay the Complainant CI$2,769.24 calculated as follows:

The Complainant earned CI$3,000 per month x 12 months per year = CI$36,000, which when divided by 52 weeks in a year means that for present purposes the Complainant is deemed to have earned CI$692.31 per week.

Unfair Dismissal	2 weeks @ CI$692.31	$1,384.62
Severance Pay	2 weeks @ CI$692.31	$1,384.62
	Total:	$2,769.24

Appeals

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



Chairperson
Signed this 25th day of June 2014