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DEPARTMENT OF LABOUR & PENSIONS
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LABOUR TRIBUNAL

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

DECISION

Case Title: [redacted] V SUNNY SMILES PRE-SCHOOL

Date of Hearing: Wednesday, 23 July, 2014
9:30am

In Attendance: **Labour Tribunal Panel**
Martha Rankine (Chairperson)
Jennodell Myles
Ana Pereira Johnson
Angelita McLean

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Secretary:
Kara Connor

For Employee:
Employer present.
Employee was not legally represented

For Employer:
Employer present.
Employer was not legally represented

Witnesses:
None.

The hearing was closed to the press and the public

[redacted] V SUNNY SMILES PRE-SCHOOL

This is the Decision and Order of the Labour Tribunal in respect of the hearing of a complaint b[redacted] the "**Complainant**" against [redacted] former employer Sunny Smiles Pre-School the "**Employer**". The complaint was heard by the Labour Tribunal (the "**Tribunal**") on the 23 July, 2014 commencing at 9:30am in the Large Conference room of the Department of Labour & Pensions, Mid Town Plaza, Elgin Avenue, George Town, Grand Cayman.

The Tribunal has reviewed and carefully considered the written complaint and sworn statement of [redacted]

The Tribunal has reviewed and carefully considered the sworn statement o[redacted] of Sunny Smiles Pre-School.

The Tribunal carefully reviewed all of the evidence and all relevant sections of the *Labour Law (2011 Revision)* (the "**Labour Law**") in reaching this decision.

SUMMARY OF EVIDENCE

The parties provided the Tribunal with a number of documents relevant to this claim. The Tribunal has set out documents provided by [redacted] omplainant as follows:

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1. Compliant form dated 10 February 2014
2. Complainant's letter to the Department of Immigration dated 21 January 2014
3. Employer's letter to the Department of Immigration dated 3 January 2014
4. Complainant's leave application approved by the Employer and dated 7 November 2013
5. Complainant's Pay Slip for January 2013
6. Sunny Smiles Pre-School Employment Contract

The following documents were tendered on behalf of the Employer as follows:

7. None.

OBSERVATIONS

The Facts

The Complainant was employed with the Employer for the period beginning 24 November 2011 to 3 January 2014, as an Early Childhood Practitioner, caring for babies and toddlers.

The Complainant worked Monday to Friday 6:30-5:00pm, with breaks, during the children's nap time. The Complainant worked approximately 42-45 hours per week, earning CI$800.00 monthly after deductions.

The Complaint

The Complainant filed a complaint with the Department of Labour and Pensions on the 3 February 2014. [redacted] asserts that [redacted] was unfairly dismissed by the Employer on the 3 January 2014 whilst on authorized leave. The Complainant stated that [redacted] applied to the Employer for time off for the period 9 to 23 December 2013, and, the 1st to the 10 January 2014. The Complainant requested a total of 19 days unpaid leave, as was travelling to Jamaica to be married.

The leave requested was approved without pay, signed and dated by the Employer.

Thereafter, the Complainant traveled to Jamaica for [redacted] wedding.

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The Complainant was due to return to work on the 13 January 2014.

On the 3 January 2014, 10 days before the Complainant was due to return to work, the Employer contacted [redacted] in Jamaica by telephone.

Per the Complainant's testimony, the Employer told [redacted] that [redacted] no longer needed the Complainant's services, as such the Complainant needed to find someone else to take out [redacted] permit. The Employer went on to state that [redacted] did not want any negative persons around [redacted] The Complainant asserts that this comment was due to the fact that [redacted] had complained against the Employer for unpaid wages, and also in relation to an infestation of rats and other vermin at the Pre-School.

The Complainant further states [redacted] then requested a dismissal letter to which, the Employer replied that there was no need.

The Complainant returned to the Cayman Islands on the 12 January 2014. On Monday, 13 January 2014, the Complainant visited the Employer again reiterating [redacted] request for written reasons for [redacted] dismissal.

The Employer again told the Complainant she did not need a letter setting out the reasons for [redacted] dismissal.

On the 15 January 2014, the Complainant visited the Department of Immigration to check on the status of [redacted] work permit.

The Complainant states that [redacted] was advised by the Department of Immigration that [redacted] permit had been cancelled from the 3 January 2014.

The Complainant further claims that [redacted] is owed unpaid wages for November 2013, in addition to vacation pay by the Employer.
The Complainant is also seeking Notice pay from the Employer.

The Complainant further asserts that the Employer owes [redacted] for unpaid pension as well.

Employer's response

In reply, the Employer stated that the Complainant was not dismissed, but in fact the Complainant resigned.

On the 13 November 2013, the Complainant advised the Employer that [redacted] was getting married in Jamaica. The Employer's reply was to ask the Complainant if [redacted] intended to return to work. The Complainant replied that [redacted] would be returning on the 13 January 2014.

The Employer stated that afterwards the school's principal, one [redacted] advised [redacted] that [redacted] did not believe the Complainant would be returning to [redacted] job.

The Employer asserts that [redacted] then contacted the Complainant by telephone in Jamaica on the 3 January 2014, to query whether the Complainant intended to return to work. The Complainant replied that [redacted] was unsure.

The Employer stated tha[redacted] then made the decision to cancel the Complainant's work permit.

That same day, the Employer wrote to the Department of Immigration, requesting that the Complainant's permit be cancelled.

FINDINGS OF FACT

The Tribunal makes the following findings of fact in respect of this complaint:

1. The Complainant was employed as an Early Childhood Practitioner between 24 November 2011 to 3 January 2014. At the date of cessation [redacted] had been employed 2 years, 1 month and 10 days.
2. The Complainant was paid CI$800.00 monthly, following deductions.
3. At the time [redacted] permit was cancelled, the Complainant was on authorized leave.
4. The Employer is unable to provide tangible evidence that the Complainant resigned [redacted] job, as asserted by the Employer.

DECISION

5. The Tribunal finds that the Complainant was unfairly dismissed on the 3 January 2014, and is entitled to unfair dismissal compensation pursuant to section 55 of the Labour Law.
6. The Tribunal finds that the Complainant was unfairly dismissed on the 3 January 2014, and is entitled to Severance pay pursuant to section 40 of the Labour Law.
7. Furthermore, the Complainant is entitled to interest at ten per cent per annum from the date of termination to the date of actual payment.

REASONS FOR DECISION

As per the Employer's sworn statements;

8. The Employer was advised by one [redacted] the Pre-School's Principal that she did not believe the Complainant would be returning.

9. Based on that assumption, the Employer made the decision to cancel the Complainant's work permit, whilst the Complainant was on authorized leave.

10. Furthermore, in [redacted] letter to the Department of Immigration dated 3 January 2014, the Employer stated, inter alia; [redacted] *went home to Jamaica to get married in December and* [redacted] *was not sure about returning to Cayman to work at the school."*

11. Furthermore, whilst the Employer asserts that during [redacted] telephone conversation with the Complainant on the 3 January 2014, the Complainant stated; *"I don't know"* in reply, the facts are that whether true or not;

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i. The Complainant was on authorized leave;
ii. There is no written notice of resignation; and
iii. The Employer acted unreasonable in cancelling the Complainant's permit, thereby terminating the Complainant's employment whilst [redacted] was on authorized leave.

ORDER/AWARDS

iv.	Severance Pay – 2 weeks wages at the Complainant's latest basic wage.	CI$ 400.00
v.	Interest –payable from 2 February 2014	CI$ 44.00
vi.	Unfair Dismissal – 1 weeks wages at the Complainant's latest basic wage.	CI$ 200.00

The total award due to the Complainant within 14 days of receipt of the Tribunal's Order is:
CI$644.00.

SUGGESTIONS OF THE TRIBUNAL

The Tribunal reminds the Complainant that matters of unpaid wages, vacation and notice pay are outside the remit of the Tribunal's jurisdiction. The Tribunal therefore suggests that the Employer should endeavour to settle these heads of claim with the Complainant.

In respect of the unpaid pension deductions the Complainant is urged to make the proper filings with the relevant authorities.

APPEALS

The Tribunal's decision, enforcement and appeals are governed by sections 75 to 78 of the Labour Law (2011 Revision). 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 22 day of August 2014.

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DEPARTMENT OF LABOUR & PENSIONS
AUG 26 2014
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