



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

Friday, 22 March 2024

Via Email

Via Email

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of **30 January, 2024**, in the matter of _____ is provided in accordance with section 75 of the Labour Act.

Decision

1. From these exchanges the Tribunal finds that _____ terminated the employment. It was clear that _____ was seeking a meeting to iron out the issues that were arising and was not seeking to end the employment. On the other hand, _____ asked _____ not to work for 2 days and then by message on the 19th stated "I DO NOT need to meet with you _____ just take all the time you need because you're not here to work and you do not appreciate your job with us I will manage by the grace of God!". This can only be taken as an indication that no meeting was necessary and that _____ was not to return to work and _____ would make alternate arrangements for the role.
2. As a result we find that _____ was terminated and that the termination was unfair.

Orders/Awards

_____ was unfairly dismissed.

_____ is awarded _____ for unfair dismissal and _____ for severance giving a total award of _____.

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

2nd 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 Labour Tribunal General Email: labourtribunaldjp@gov.ky



Labour Tribunal

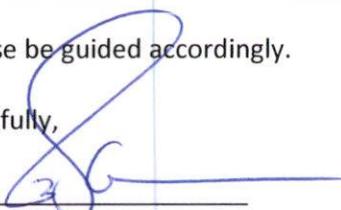
CAYMAN ISLANDS GOVERNMENT

Tel: (345) 945-8960

Email: Lat@gov.ky Alternative Email: labourtribunal@dlp.ky

Please be guided accordingly.

Faithfully,



Kara Connor, Labour Tribunal Secretary



Department of Labour & Pensions
Cayman Islands Government
 2nd Floor, Mid Town Plaza
 Elgin Avenue, George Town
 P.O. Box 2182
 Grand Cayman KY1-1105

Direct Ext: (345) 244-4015 Direct Email: kara.connor@gov.ky
 Labour Tribunal General Email: labourtribunaldlp@gov.ky
 Main Phone Contact #: (345) 945-8960
 Confidential Hotline Contact #: (345) 945-3073
 Department's General Email: dlp@gov.ky
 Freedom of Information Email: FOI.DLP@gov.ky
 Website: www.dlp.gov.ky
 Facebook: www.facebook.com/cidepartmentlabourpensions

LABOUR TRIBUNAL		
<i>Extraordinary No.14/2023</i>		
Chairpersons	Deputy Chairpersons	Members
Donnette Goddard	Michelle Coleman Cashema Clarke Angelita Edwards Vincent Frederick Nadine McBean	Nanalie Cover Pamela Duncan Jaron Leslie Harwell McCoy Petrina Moore
LABOUR TRIBUNAL		
<i>Extraordinary Gazette No. 98/2023</i>		
Chairpersons	Deputy Chairpersons	Members
Robert Jones (Resigned) Gregery Barnes Jennodell Myles Samantha Bennett	None	Davina Ebanks Vaccianna Franklin Shelly-Ann Davis
LABOUR TRIBUNAL		
<i>Meeting No. 100/2023</i>		
Chairpersons	Deputy Chairpersons	Members
James Kennedy Keith Myers	None	None

Decision

Matter:
Date of Hearing: 30 January 2024
Location: Department of Labour & Pensions, Midtown Plaza, George Town, Grand Cayman via Zoom

Attendees

The Tribunal
 James Kennedy, Chairperson
 Click here to enter text.
 Davina Ebanks, Member

For the Complainant
 No-one
 Click here to enter text.

For the Respondent
 No-one

Observers
 None

The Proceedings were recorded.
The Proceedings were closed to the press and the general public.

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 _____ (“the Complainant” or _____ against former employer, _____ (“the Employer”).
2. The Complaint was heard by Zoom, on 30 January 2024, commencing at 10.30 a.m.

Background

3. Neither party attended the Tribunal hearing. _____ had not engaged with the DLP or the proceedings since providing a written response to the complaint by letter addressed to Mr Ricketts of the Department.
4. _____ was aware of the proceedings and was on the Zoom call waiting room prior to the commencement of the hearing. _____ then dropped off the call and despite several attempts to speak with _____ did not engage further.
5. Given the relative simplicity of the claim and the significant delay in the matter it was decided to proceed with a hearing. This course is permissible pursuant to section 75(6) of the Labour Act which reads as follows:

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.

6. _____ was employed as a _____ by _____ on behalf of _____ family commencing February 2020. _____ was paid _____ hour and stated _____ averaged _____ per week and received _____ salary every two weeks.
7. In _____ narrative complaint _____ recounted that _____ main role was to transport the _____ and to _____ and do _____ in between.
8. _____ stated that _____ work hours increased dramatically in June 2020 when Covid restrictions lifted and despite speaking with _____ employer about this and _____ salary, _____ efforts to either reduce hours back to what was originally agreed or to increase _____ salary were ignored.
9. After a year of working, _____ states _____ didn't receive _____ vacation pay despite having not taken any vacation time.
10. On the 14th of May 2021 _____ recounted that _____ attended for work at 7.45 am and didn't leave until 1 a.m. and the next day _____ had a verbal confrontation with _____ as _____ told _____ needed to go home and rest and not work that morning despite it being part of _____ agreed work schedule.

11. The next Monday (17th of May) was a public holiday and [redacted] told [redacted] to stay at home on the Tuesday and Wednesday and when [redacted] followed up [redacted] was told by [redacted] not to come back at all and they made alternative arrangements for the house work and kids transportation, i.e. they were effectively dismissing [redacted]. No formal communication was ever received.

12. [redacted] written response can be summarised as follows:

- [redacted] accepted the [redacted] position as [redacted] drove and had [redacted] car. Circumstances changed when [redacted] car needed to be fixed. The employer loaned [redacted] money to fix [redacted] car and then subsequently loaned [redacted] a car which was then in a motor vehicle collision. [redacted] was then provided with a rental car.
- [redacted] shift was to start with [redacted] dropping the [redacted] to [redacted] and return at [redacted]. During this time [redacted] was often late and arrived at 10:00 am or 11:00 am or would not come back to the house at all until after collecting the [redacted]. During this time, if [redacted] worked late [redacted] would be compensated accordingly, however, when [redacted] stopped working required hours, [redacted] was no longer paid overtime. [redacted] was off on Thursdays and Sundays and every other Saturday to attend church. Occasionally on Thursdays [redacted] was asked to collect the [redacted] from [redacted]. If [redacted] worked late evenings that [redacted] was given time back to rest.
- [redacted] began erratic behaviours like disappearing and leaving the [redacted] unattended to drive to [redacted] home. [redacted] began to bring [redacted] dog to work without the employer's permission. Some evenings [redacted] would not [redacted] the [redacted] or [redacted] in the evenings.
- They have held short meetings with [redacted] in the past to discuss all of the areas of concern and also verbally warned [redacted]. After the discussions there would be no improvement. [redacted] confirmed that [redacted] accepted [redacted] pay every two weeks and no longer submitted any overtime.
- There was an occasion where [redacted] committed to assist [redacted] while [redacted] was away, however, [redacted] was not available for the entire time she was away which resulted in [redacted] having to cancel meetings. When [redacted] approached [redacted] to discuss, [redacted] answered that "[redacted] cannot and will not continue to work under these conditions" and that [redacted] entitled to [redacted] vacation and will do what [redacted] has to do there and then. [redacted] confirmed that [redacted] advised [redacted] to take all the time that [redacted] needed and marked the dates. [redacted] did not return to [redacted] on the date and [redacted] has not heard back from [redacted].
- [redacted] stated that [redacted] was made aware of the busy schedules and hours during the interview for the role. The employer added that during the pandemic lockdown, [redacted] was fully compensated. Additionally, [redacted] stated that [redacted] was never refused time off or deducted from [redacted] pay.

The Tribunal Observations

13. Whilst there is some complaint over [redacted] performance in the response of [redacted], these are not relevant as the employer denies having dismissed [redacted] at all. The issue in this case is

whether or not [redacted] walked off the job and effectively terminated the employment [redacted] or whether [redacted] was terminated by [redacted] employer.

14. Given the lack of any warning and indeed any explanation of why the performance or conduct merited termination, if the Tribunal finds that the employer terminated the employment it will be an unfair dismissal under the Labour Act.
15. Alongside the statements of the parties, the Tribunal was provided with screenshots of messages between the parties.
16. On the 18th of May [redacted] wrote to

"You act as if you work so damn hard as if we're slaving you we even brought in extra help...and extended hours is what you're complaining about"

[redacted] *"I don't need you to come in today!"*

17. [redacted] responded the same day *"Very very extended hour."*

18. On the 19th of May, [redacted] r quoted [redacted] response and said, "I don't need you today!" and the exchange continued:

"Good morning [redacted] first let me say that the contract i was given until now, was never signed and I am now working for 15 months of which time my two weeks vacation is overdue ... I have been working very extended hours for which I'm not paid and when I speak about it, I'm ignored or it's just brushed aside I cannot and will not continue to work under such conditions and I'm requesting a meeting to have these and other issues resolved going forward"

*let me say to you ... we don't need you, you need us. We don't work for you, you work for us but you seem to think it's the other way around. I DO NOT need to meet with you just take alllll the time you need because you're not here to work and you do not appreciate your job with us I will manage by the grace of God!
Clearly you were just eager to get a job at the time. [redacted] as my witness we were very clear to you in your interview we could not have stressed it anymore than we did about our hectic schedules out social life, political life and our household of [redacted] you knew all about our businesses we both have to run. I operate a business 7 days of the week MONDAY - SUNDAY and mad hours during busy season.*

all you've said adds up to how very unreasonable, uncaring and disrespectfully ungrateful you really are. I have noticed with your long lament, you have never once mentioned about the extended hours worked without being paid. Many nights I'm leaving your [redacted] after 1 pm or sometimes not at all while you and husband are out partying without a care or consideration that I have a life and a home in which to go ... I will now put you on notice that this matter will be reported to the Labour Department by formal complaint and as I pointed out to you, my Contract was never signed, overtime hours were never paid for

and my two weeks vacation is long overdue ... I will do what I have to do as your work abuse stops here and now

you are very rude, and also note you destroyed my car, and you don't work a full day. Please note I don't go out to party but to do community work.

19. From these exchanges the Tribunal finds that [redacted] terminated the employment. It was clear that [redacted] was seeking a meeting to iron out the issues that were arising and was not seeking to end the employment. On the other hand, [redacted] asked [redacted] not to work for 2 days and then by message on the 19th stated "I DO NOT need to meet with you [redacted] just take alllll the time you need because you're not here to work and you do not appreciate your job with us I will manage by the grace of God!". This can only be taken as an indication that no meeting was necessary, and that [redacted] was not to return to work and [redacted] would make alternate arrangements for the role.
20. As a result, we find that [redacted] was terminated, and that there was not serious misconduct that warranted [redacted] termination and as such the termination was unfair.

Decision

21. [redacted] was unfairly dismissed.

22. [redacted] is awarded [redacted] for unfair dismissal and [redacted] for severance giving a total award of [redacted]

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.



James Kennedy, Chairperson
Signed this 12th day of March 2024