



# Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

30 July 2024

Via Email

Via Email

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of **26 June, 2024**, in the matter of is provided in accordance with section 75 of the Labour Act.

## Decision

1. The Tribunal unanimously agrees that the Complainant was fairly dismissed.

## Orders/Awards

No Award Ordered

## 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:

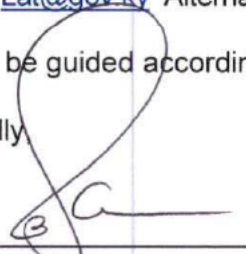
### Secretary to The Labour Appeals Tribunal

2<sup>nd</sup> Floor Mid Town Plaza  
Elgin Avenue, George Town  
Grand Cayman KY1-9000  
Cayman Islands  
Tel: (345) 945-8960

Email: [Lat@gov.ky](mailto:Lat@gov.ky) Alternative Email: [labourtribunal@dlp.ky](mailto: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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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:**

**Date of Hearing:** 26 June 2024

**Location:** Via Zoom & Department of Labour Conference Room

**Labour Tribunal Panel**

**Chairperson:** Jennodell Myles  
**Deputy Chairperson:** Vincent Frederick  
**Deputy Chairperson:** Angelita Edwards

**Acting Labour Tribunal Secretary:** Kara Connor

**Employee/Complainant:**

**Employer/Respondent:**

**Observers:** It is noted that none of the parties were in attendance and there were no legal representative present at the Tribunal hearing.

## 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 (the Complainant") against former employer, The ("the Respondent"). The Complaint was heard by the Labour Tribunal on the 6/26/2024, 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 August 29, 2023. The Labour Tribunal reviewed and found there were sufficient evidence on file to start a decision on this matter.

## Background

The Labour Tribunal noted that in the absence of the Respondent and the Complainant it was decided there were enough evidence on file to go ahead with hearing the matter as mandated by **Section 75 (6) of the Labour Act (6) which states: *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 Labour Tribunal was informed that the Respondent and the Complainant were emailed in advance of the Labour Tribunal hearing. However, none of the parties attended.

- The Complainant was hired by the or The Complainant earned a basic wage of | earning at standard weekly hours between Monday to Sunday.
- On August 22, 2022 the Complainant received a documented verbal warning letter for unsatisfactory work quality, failure to follow instructions and performance. The documented verbal warning letter was signed.
- On September 13, 2022 the Complainant received a 1<sup>st</sup> written warning letter for unsatisfactory work quality, carelessness, violation of policies/procedures and performance. The warning letter stated the Complainant refused to sign.
- On July 6, 2023, the Complainant was at work and is alleged to have caused confusion between and that left the Respondent out of cash. It is also alleged that the Complainant was trying to unlawfully settled the funds by which was allegedly construed as theft. This ultimately attracted the attention of the Supervisor who reported it to Management.
- On July 19, 2023 the Complainant was immediate terminated under section 52 (1) (a) & (c) of the Labour Act.
- On August 29, 2023 the Complainant filled out and filed a labour complaint against the Respondent with the Labour Department claiming for Unfair Dismissal.
- On September 18, 2023 the Labour Department sent a letter dated September 15, 2023 via email to the Respondent notifying them of the Complainant on file against them and which also requested additional information.
- On October 5, 2023 an email was received by the Labour Officer requesting an extension on behalf of the Respondent.
- On October 25, 2023, the Labour Officer received an email reply from the Respondent providing the necessary requested information and a response letter dated October 13, 2024 explaining termination details.
- On May 3, 2024 the Secretary of The Labour Tribunal Secretary sent out a Zoom hearing notice to the parties scheduling a hearing for June 26, 2024.
- On June 26, 2024 the Labour Tribunal heard the meeting in the absence of the Respondent and the Complainant.

The Labour Tribunal promptly proceeded into the practical matters of **Unfair Dismissal** and faithfully rendered an absolute decision soundly based on the documentary evidence on file.

***The Labour Tribunal took note of the following issues that affected the functional relation between the Respondent and the Complainant. It was noted that there were mentions of serious work place violations of safety protocols that may have led to the ill-health of the Complainant. The Labour Tribunal invariably noted the Department of Labour inspected the premises and found no evidence of safety violations. The Labour Tribunal consideration the bullet points below which includes but are unlimited to the following:***

1. The Complainant's written statement as outlining on the DLP / Form 1B.
2. The supporting statements given by employees on shift/duty at the time of incident.
3. The termination letter on file.
4. The documented verbal warning letter to the Complainant.
5. The written warning letter to the Complainant.
6. The effective date of the Complainants termination.
7. All other evidence on official file.

The aforesaid issues were determined to be of utmost importance to conclude a Labour Tribunal decision.

The Labour Tribunal unanimously determined the above timeline in reaching it's conclusion:

#### Summary of Evidence

The Complainant submitted a claim to the Labour Department to be compensated for Unfair Dismissal stating that was unfairly dismissed by the Respondent and claimed that was a good employee at her job and should've been treated differently. *The Labour Tribunal noted that the Complainant explanation on the DLP / Form 1B which led to dismissal.. However it was noted that is contradictory to other evidence on file.*

The Respondent provided supporting evidence from other employees on duty the day of the infraction that led to the Complainant's dismissal. There are four written statements which are all in sync explaining what transpired on July 6, 2023. These written statements contradicts the Complainant's written statement in evidence. *The Labour Tribunal noted the four co-workers of the Complainant stated . was the direct caused of the confusion and for the being assigned improperly. This eventually led to the Respondent being : at the end of the shift.*

The Complainant was also on notice for unsatisfactory work quality, carelessness, violation of polices/procedures and performance. *The Labour Tribunal noted the seriousness of the documented verbal warning and lastly the warning letter which was not signed but legally binding and within the one year period.*

The Labour Tribunal noted the Respondent's response letter date October 13, 2023 allegedly stated that the Complainant was systematically involved in activities involving However it was decide by Management that because of situation with having a - was not chastised to the fullest in order for to gain future employment. *The Labour Tribunal noted there is no supporting evidence on file to support such claims that happened before July 6, 2023. Therefore any evidence on record pointing to activities of theft before July 6, 2023 will be considered nil and void, and will not be part of the Labour Tribunals final decision.*

The Respondent and Complainant were both absent for the hearing which would have been a great opportunity for both parties to have provided other evidence before the Labour Tribunal. After carefully reviewing the remaining evidence, the Labour Tribunal made note that no other additional evidence would be need to render a decision.

The Labour Tribunal unanimously concluded the reviewing of the present evidence respectfully submitted by the Respondent and the Complainant and properly submitted it's conscious decision accordingly.

## 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

The Labour Tribunal after deliberating all evidence on official record, and after hearing the testimony of the Complainant, hereby finds the Respondent was fair & lawful when the decision was made to terminate the Complainant under Section 51 (1) (a) & (c) and Section 52 (1) (a) & 52 (3) of the Cayman Islands Labour Act.

The Complainant was not on probation and effectively served two years under the employment of the Respondent. Please find below Section 49 which deals with 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.**

The Labour Tribunal finds the employment contract in evidence clearly showed the Complainant was not employed for a fixed period. Therefore the Tribunal determined the Complainant was a serving long-term employee. Please find below Section 50 which deals with 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.**

The Labour Tribunal noted there were significant evidence on file that ultimately supported the Respondents immediate termination of the Complainant. The evidence was well documented and back-up by four employees who were working alongside the Complainant on July 6, 2023. All witnesses statements were collaborated clearly showing that the Complainant was solely at fault. The Labour Tribunal took note of the possible eligibility of theft happening based on the evidence on file from the four witnesses. This left the Respondent with little to no choice but to immediate dismiss the Complainant. Please find below Section 51 which deals with Dismissal for Misconduct.

**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.

The Labour Tribunal equally notes that the Complainant was dismissed from [redacted] position of employment after receiving first warning letter dated September 13, 2022 for unsatisfactory work quality, carelessness, violation of policies/procedures and performance. The Labour Tribunal finds the 1<sup>st</sup> warning letter to be within the twelve months and that the employee was properly warned that further violations could lead to immediate dismissal without further notice. The Labour Tribunal noted the 1<sup>st</sup> warning letter clearly stated in the disclaimer that further violations of the company's policies & procedures could result in a further warning, suspension without pay and or immediate termination of employment. This 1<sup>st</sup> warning letter was actively on record and legally binding as per Section 52 (3). The Termination letter was found to be sufficient and satisfactory when presented with the supporting documents.

**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.

#### Decision

The Labour Tribunal unanimously agreed the Complainant was fairly dismissed from [redacted] employment based on all of the tangible evidence on file. The Labour Tribunal rejects the Complainant claims for **Unfair Dismissal**.

#### Orders/Awards

The Labour Tribunal hereby orders no award to be paid and wholehearted dismisses the case.

#### 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.



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Vincent Frederick  
Deputy Chairperson  
14-Jul-24