



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: labourtribunal@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 Gazette No. 45/2019</i>		
Chairpersons	Deputy Chairpersons	Members
Gregery Barnes	Ryan Charles	Caroline Barton
James Kennedy	Angelita Edwards	Melaynee Bodden
Jennodell Myles	Brando Rankine	Martha Bush
Kathryn Rowe	Stephanie Suckoo <i>(Resigned)</i>	Ian Charlery
	Noel Webb	Ludivene Dilbert
		Jack Ebanks

Decision

Matter: [REDACTED]
Date of Hearing: 28 June 2021
Location: Main Conference Room, Department of Labour & Pensions

Attendees

The Tribunal
 James Kennedy, Chairperson
 Jack Ebanks, Deputy
[Click here to enter text.](#)

For the Complainant



For the Respondent
 Alastair David – HSM Chambers
 Shena Ebanks
 Edward Howard Jr

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 by [REDACTED] ("the Complainant" or "[REDACTED]") against former employer, the [REDACTED] ("the Employer" or "[REDACTED]").
2. The Complaint was heard in person, on 28 June 2021, commencing at 10 a.m.
3. The Tribunal has reviewed and carefully considered the Complaint, the written representations made by the Employer together with the other documentation referred to in this Decision.
4. The Tribunal has also reviewed the relevant sections of the Cayman Island Labour Act (2021 Revision) ("the Act") and in reaching this Decision, the Tribunal has also carefully considered the evidence, and oral testimony of the Complainant and of the witnesses for the [REDACTED].

Background

1. [REDACTED] was dismissed for serious misconduct by letter dated 28 June 2019.
2. [REDACTED] was employed from 21 March 2011 until 28 June 2019 (8 full years). [REDACTED] role at the time of termination was [REDACTED] and he was paid CI\$ [REDACTED] per month at that time. (\$ [REDACTED] per week).
3. [REDACTED] gave evidence first on behalf of the employer. Written statements of evidence had been helpfully submitted by the employer for both witnesses and these were duly adopted as evidence in chief.
4. There were a number of instances of historic poor performance and insubordination with the last being October 2017 and these warnings were not in place at the time of the dismissal but do demonstrate some similar behaviour to the actions that led to the dismissal.
5. The issues that arose leading to the dismissal of [REDACTED] mostly relate to [REDACTED] relationship with a co-worker and Manager [REDACTED]. [REDACTED] relates that these issues surfaced in early 2019 and informal meetings were initially held to resolve the dispute in February and March 2019. No notes of the meetings were presented but we accept that the meetings took place as described.
6. The first written complaint was an email from [REDACTED] dated 24 May 2019 outlining allegations that [REDACTED] was disruptive on a jobsite and unnecessarily critical of a co-worker. A second complaint by [REDACTED] was sent to [REDACTED] on 29 May outlining similar complaints of [REDACTED] being difficult with co-workers and not working in a manner consistent with [REDACTED] obligations.
7. As a result of these complaints [REDACTED] followed good practice and held investigatory meetings with impacted employee [REDACTED] and separately with the Complainant and [REDACTED]. At the second meeting at which the Complainant was present, the disciplinary concerns were put to the Complainant and [REDACTED] responded by stating that [REDACTED] was advised to remain silent and requested concerns be put in writing to [REDACTED]. The meeting concluded with the Complainant being advised that the as [REDACTED] had not rebutted the complaints, they would be put in writing and [REDACTED] requested to provide a written response.

8. A delay occurred and an Internal Memorandum was sent to [REDACTED] on 20th June 2019 by the [REDACTED]. This memo outlines the issues and appears to have been compliance with the request by [REDACTED] for the allegations to be outlined in writing. The Memo stated:

"As outlined in the meeting, you have 10 days from the date of the meeting to address in writing, given your refusal to do so verbally in the meeting the following concerns:

- (a) Imposing possible danger by threatening another employee. A complaint has been made regarding your conduct towards a fellow employee. It is charged that you spoke to this employee in a threatening and disrespectful manner, using abusive language on at least 2 occasions 24th and 27th May 2019.*
- (b) Inappropriate and disruptive behavior towards your co worker on a job site.*
- (c) Insubordination and unprofessionalism by intentionally ignoring reasonable directions from your supervisor and arguing with a supervisor on the job site. This is to advise that your pay will be garnished for 1 hour 30 minutes on May 24th which you came to the job sight at approximately 2:00pm, sat on a wall and did not carry out any work. Instead took videos, photos and passed comments while the other employees were work, until end of the work day.*
- (d) Inappropriate and disruptive behaviour toward the organisation by disregarding the chain of command. If there was a cause for concern which you felt was being ignored by your manager, you chose not to bring the matter to the attention of a member of the senior management team.*

Pursuant to the Public Servant Code of Conduct you are in breach sections (a), (b) and (f). Management is dissatisfied with your behavior and effort being paid to your duties as it relates to point d) your pay will be deducted to reflect the non-work hours on May 24th. In addition, we also want you to personally apologise to your colleague."

9. On 20th June 2019 this Memo was sent by email to [REDACTED] and [REDACTED] was asked again to provide a response by no later than 24th June.

10. No response was received and on the 28th June the employer, without any further notice summarily terminated the employee.

11. The reasons set out in the termination letter can be summarised as follows:

- 11.1 conduct of a threatening nature leaving a fellow employee upset and shaken on 24th and 28th May 2019.
- 11.2 Insubordinate and unprofessional behaviour by ignoring directions of a supervisor on 24th and 28th May 2019.

12. The termination letter outlined the allegations and concluded

"As part of the investigation into the complaint by the other employee and your behavior on 24 and 27 of May 2019, you were invited to a meeting with [REDACTED] and [REDACTED], on Tuesday 4 June 2019, so that you could provide details of your version of events. However, you decided not to participate in the meeting due to the absence of the [REDACTED] and were subsequently given until 14 June 2019 to address these issues in writing. You have yet to provide the Company with any details in response to these allegations.

After investigating the matter in accordance with section 11.2 of the Personnel Manual, the Company has decided that your actions were such that the employment relationship cannot reasonably be expected to continue.

Additionally the insubordination and threatening behaviour in regards to the comment made to the [REDACTED] and the [REDACTED] highlights your intolerable manner, hence forthwith termination for misconduct."

13. [REDACTED] statement relates that [REDACTED] emailed the complainant on the 24th June seeking a response to the Memo and not having received one, [REDACTED] ([REDACTED]) considered matters and came to the decision to terminate and the letter was sent on 29th June.
14. [REDACTED] in [REDACTED] oral evidence stated s/he joined the [REDACTED] in January 2018 so couldn't give evidence about written warnings and other matters before then. [REDACTED] stated the meeting in February between [REDACTED] and the complainant was an informal meeting to discuss some issues they were having that stemmed from a difference of opinion on how to deal with things and that there was personal and professional tension between [REDACTED] and the complainant.
15. [REDACTED] confirmed that after the meeting on 4 June, that the relevant parties worked together until the termination date. In cross examination [REDACTED] indicated that steps had been taken to sort out the issues informally including speaking personally with the complainant but the tension continued and complaints from [REDACTED] didn't stop. [REDACTED] also confirmed [REDACTED] was relying on the information coming from [REDACTED] [REDACTED] and that no written communication was received by the complainant between the June 4th meeting and the Memo letter on June 20th.
16. The evidence from the employer was completed by the then [REDACTED], [REDACTED]. He became [REDACTED] in December 2020 and was acting at the time of the dismissal.
17. [REDACTED] recounted that one issue related to pedestrian signalling at the Airport. The system was faulty and [REDACTED] [REDACTED] was trying to fix it. The complainant had taken it upon [REDACTED] to report the issue to the RCIPS as [REDACTED] believed [REDACTED] was trying to sabotage the signals in order to undermine [REDACTED]. The issue was fixed by [REDACTED] to the satisfaction of both [REDACTED] and the RCIPS.
18. [REDACTED] stated [REDACTED] was aware of the on-going issues although not in attendance at the 4th June meeting and after the Memo of 20th June went unresponded to [REDACTED] felt obliged to make a decision. [REDACTED] stated [REDACTED] reached the decision to terminate based on the emails, [REDACTED] evidence and what [REDACTED] had been told. [REDACTED] determined that the conduct fell to be characterised as gross misconduct based on previous misconduct, the presence of 2 separate acts, the previous issues with [REDACTED] and the failure to follow the chain of command and reporting matters to the police.
19. After the conclusion of the Employers case [REDACTED] gave evidence. [REDACTED] accepted that [REDACTED] and [REDACTED] had personality issues at times, but [REDACTED] regarded these as normal tension between 2 driven individuals. [REDACTED] denied generally using threatening language or being insubordinate and with respect to the involvement of the RCIPS [REDACTED] explained that [REDACTED] asked Officer [REDACTED] if it was legal to make changes to traffic control devices; [REDACTED] said it was not and may be illegal and this was the extent of [REDACTED] complaint and that [REDACTED] was not making a report.
20. [REDACTED] accepted being invited to a meeting on 4th June and was made to believe that the meeting would be recorded and [REDACTED] wanted [REDACTED] present. [REDACTED] indicated that [REDACTED] didn't get any warning prior to termination and that after [REDACTED] heard the words "insubordination, bullying and harassment" involving [REDACTED] and [REDACTED] didn't respond and that there were serious allegations and that [REDACTED] thought there would be more meetings to deal with the allegations.

The Tribunal Observations

21. This is not a straightforward case for the Tribunal. The complainant was a relatively long serving and relatively senior member of staff. ■ had some historic complaints on ■ file but nothing which demonstrated that between February and June 2021, issues would arise which would lead to ■ summary termination.
22. We accept that there was fault in the complainants conduct, ■ had no legitimate business reporting matters to the RCIPS to make complaints about internal matters, ■ had also acted poorly with respect to ■ dealings with ■ (■ manager) and ■ and the use of ■ own vehicle and self-confessed desire to do so and seek payment for same was clearly giving rise to issues of ■ own making.
23. In saying the above, the issues themselves were not so egregious that they merited drastic and immediate action. This can be seen by the ■ own conduct. They quite properly held informal meetings to try and diffuse the situation and when that didn't succeed held what appears to be an investigatory meeting on the 4th June 2019.
24. The Code of Conduct for the ■ at 11.1.1. establishes that the employee will be advised of the complaint and arrangements made to discuss the case with them, and no disciplinary action shall be taken until the matter has been fully investigated and discussed with the employee.
25. The code at 11.1.2 also mandates that at every stage of the disciplinary process the employee will have the opportunity to state their case in writing and provide an oral explanation. They also have the right to be accompanied and to an appeal (11.1.3). At 11.2 ■ shall arrange for the case against the employee (after investigation) to be formalised and put in writing and if the employee is accused of gross misconduct, on completion of the investigation and the full disciplinary procedure the ■ if satisfied that gross misconduct has occurred, the normal result will be summary dismissal (11.7 of the Code of Conduct).
26. The ■ followed the disciplinary process by holding an investigatory meeting, and we don't criticise them for not putting the allegations in writing prior to that meeting. But the natural next step, and one in keeping with their own Code of Conduct, was to conclude the investigation after the meeting of the 4th June and determine either that (1) no formal sanction is necessary and conclude the matter (2) that formal sanction of some form may be necessary and move into the disciplinary process. The disciplinary process involves setting out in writing the allegations and giving the employee the right to respond in writing and provide an oral explanation. It is in our view an important step in that process that the letter advising that the employee is now involved in a formal disciplinary process and that sanctions can result, including termination for gross misconduct.
27. After the 4th June meeting the next significant action was that the complainant was given the Internal Memorandum on the 20th June and this is where there problems for the employer arise. The document is headed as an Internal Memorandum with subject "Meeting to discuss concerns of misconduct". This letter complied with the legitimate request of the employee to be given in writing the complaints being levelled against ■. But the Memo doesn't indicate anywhere that a live and on-going disciplinary process is taking place. In fact, the letter doesn't (a) seek to organise a disciplinary meeting (b) inform the complainant of ■ right to be accompanied to the meeting or present evidence (c) indicate the range of sanctions that may result if at the end of the hearing ■ is found guilty of misconduct. Furthermore, the conclusion of the letter gives the clear impression that the matter is resolved by way of docking of pay and a request for the complainant to personally apologise to ■ colleague.

28. The Memo was delivered by email and the cover email did ask for a response no later than Monday June 24th "as we have not received this as yet although verbally requested on June 4th."
29. This email request for a response does not come close to remedying the issues with the disciplinary process and the view of the Tribunal is that upon no response being received the next necessary step for the employer to take was to write formally to the employee indicating that [redacted] lack of response meant they believed there was prima facie grounds to commence a formal disciplinary process, invite [redacted] to a meeting with their investigatory findings, alert [redacted] to the potential consequences of findings of misconduct and inform [redacted] of [redacted] right to be accompanied. These steps are not slavish adherence to a formula or [redacted] Rules but necessary steps in the process of employee discipline generally and indeed in accordance with the [redacted] own Code of Conduct. Whilst the Tribunal can and will accept minor errors and omissions, the situation here is not of minor error or omission but substantial and fundamental to the fairness of the process and decision. It was also not an onerous task, involving one additional letter and one meeting, and could have been concluded within the timeframe of 4th to 29th June without trouble.
30. In the circumstances we find that the Complainant was unfairly dismissed.
31. We do have sympathy with the [redacted] nonetheless. There was legitimacy in their complaints and particularly with respect to the report to the RCIPS which appears a malicious act completely out of keeping with [redacted] duties of fidelity and good faith to [redacted] employer.
32. It was clear that [redacted] had got to the stage where [redacted] felt that [redacted] was more important to the business than was reality and that [redacted] felt that [redacted] position was safe regardless of [redacted] conduct. This evidenced in particular by [redacted] refusal to explain [redacted] conduct or even to agree to apologise as requested in the 20th June Memo. In the circumstances the Tribunal will reduce [redacted] award for unfair dismissal compensation to 2 weeks.


Decision

33. The complainant was unfairly dismissed and should be compensated as follows:

- 33.1 Severance pay £ [redacted] per week
33.2 Unfair dismissal compensation [redacted] @ \$ [redacted] per week
33.3 Total award \$ [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 Act may, within 14 days of notification of the decision, or service of notice, appeal to the Appeals Tribunal.



James Kennedy, Chairperson

Signed this 26th day of October 2021