



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

Department of Labour & Pensions

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: labourtribunaldip@gov.ky

Labour Tribunal

Monday, 12 April 2021

To be Collected

c/o Mr. Alastair David
HSM Chambers

Ref: 200655

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of **Wednesday, 24 September 2020**, in the matter of _____ is provided in accordance with section 75 of the Labour Act.

Decision

We do find that the Employer acted forthwith and thus this provides another further reason for the decision arrived at by the Tribunal that the Complainant was fairly dismissed.

Without any evidence in rebuttal from the Complainant other than above statements, the letter could be said to satisfy the Tribunal on the balance of probabilities that the reason was as given (i.e. misconduct) and that this is a reason which is a potentially fair reason as falling within the scope of Section 51 of the Law.

Orders/Awards

Based on the above the Tribunal finds that the Complainant's dismissal was fair and the Tribunal makes no order or award.

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:



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P.O. Box 2182 George Town
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Direct Ext: (345) 244-4015 Direct Email: kara.connor@gov.ky
Labour Tribunal General Email: labourtribunal@dlp.gov.ky

Secretary to The Labour Appeals Tribunal
Ministry of Education, Employment, and Gender Affairs
2nd Floor Mid Town Plaza
Elgin Avenue, George Town
Grand Cayman KY1-9000
Cayman Islands
Tel: (345) 945-8960
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Please be guided accordingly.

Faithfully,

A handwritten signature in blue ink, appearing to be 'Kara Connor', written over a horizontal line.

Kara Connor
Labour Tribunal Secretary



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LABOUR TRIBUNAL <i>Extraordinary Gazette No. 45/2019</i>		
Chairpersons	Deputy Chairpersons	Members
Gregery Barnes James Kennedy Jennodell Myles Kathryn Rowe Robert Jones	Ryan Charles Angelita Edwards Brando Rankine Stephanie Suckoo (<i>Resigned</i>) Noel Webb	Caroline Barton Melaynee Bodden Martha Bush Ian Charlery Ludivene Dilbert Edward Solomon

Decision

Matter:
Date of Hearing: 22 September 2020
Location: Main Conference Room, Department of Labour & Pensions

Attendees
The Tribunal
Noel Webb, Chairperson
Jennodell Myles, Deputy

For the Complainant

For the Respondent
Alister David – HSM Chambers – Attorneys for RBC

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 _____ ("the Complainant" or '_____) against _____ ("the Employer" _____) former employer,
2. The Complaint was heard in person at Midtown Plaza, on 22 September 2020, 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 (2011 Revision) ("the Labour Act") and in reaching this Decision, the Tribunal has also carefully considered the evidence, and oral testimony of the witnesses.

Background

1. The Complainant was employed by _____ as a _____ and subsequently a _____ from 8th May 2018 and was terminated by letter on 2nd September 2019. _____ was paid _____ and was paid _____. This gives a weekly wage _____ and full completed years of service of 1 year.
2. The Complainant worked at what was known as "_____. The plant was a secured open air area.
3. The Complainant was one of many trust fabrication persons employed in the _____.
4. The Complainant indicated that _____ termination from _____ Employer for misconduct was unwarranted, as _____ had been employed with _____ from August 1, 2017 (two years) and never even given a warning.
5. The Tribunal was provided with _____ Employment Contract dated _____, for the previous truck driver position. The start date not disputed by the Complainant nor Employer.
6. The Complainant further explained that on the day in question _____ was on the compound with a group of coworkers, and was told by a Supervisor, _____, to assist in another section, _____ had advised the Supervisor that there was no work happening in that section. _____ even went as far as to look and observed _____ coworker in the section _____ was instructed to go, smoking against a wall. The Supervisor left and went inside, in a matter of time _____ Manager, _____, came downstairs and gestured for the Complainant

to come to [redacted] then responded by telling the [redacted] that [redacted] was not interested in hearing the lies or stories that [redacted] was told. The Manager then went back upstairs where the [redacted] was located, [redacted] was then informed that [redacted] employment was being terminated.

7. The Complainant did not refute that [redacted] was out of line nor that [redacted] did not shout or disrespect anyone in any manner.
8. The Employers stated that on Monday 2 September 2019, the Complainant got into a heated confrontation with Supervisor, [redacted], after [redacted] was asked to work with another member of the team because [redacted] was not carrying out any work at all. Due to the Complainant's aggressive attitude towards [redacted] left the floor to get [redacted], to sort out the situation.
9. Further that when [redacted] approached the Complainant, the Complainant became very abusive and started to curse at [redacted].
10. In order to prevent the situation from escalating further, [redacted] decided that [redacted] should go home for the rest of the day in order to calm down, and return to work the following day in a better frame of mind.
11. This angered the Complainant even further and [redacted] aggressive and threatening attitude towards [redacted] escalated to the point that [redacted] felt that the Complainant's behaviour created a hostile and unsafe working environment for all of the other staff members in the team.
12. The Employer considers this type of behaviour to be so serious that it cannot be expected to be tolerated or allowed to be continued.
13. Accordingly [redacted] employment was terminated at that time on Monday, 2nd September 2019.
14. The Employer was judicious in its dealings with [redacted] throughout the entire process and acted prudently in terminating [redacted] employment.
15. The Complainant stated that [redacted] was not questioned and [redacted] version of the events was that [redacted] stated as above.
16. Whilst no direct evidence was led with respect to the investigation, a Statement of [redacted] from the Employer to the Department of Labour and Pensions dated 16 September 2020 outlined the investigation undertaken. It appears from that statement that [redacted] was spoken to by [redacted] in relation to the incident with [redacted].

17. The Statement from [redacted] concludes:

"One of the reasons why I spoke with both [redacted] was to ensure that I was satisfied that [redacted] decision was the correct decision. If I had felt that [redacted] had acted unreasonably or too harshly I would have notified [redacted] that [redacted] was reinstated and tried to resolve matters internally.

However, on speaking to both [redacted] it became clear to me that [redacted] behavior was

so unacceptable that dismissal was the only option. From what both told me it was clear that had been insubordinate, disrespectful, rude, sought to undermine the authority of both and been aggressive when attempts were being made to calm down.

As a business, we cannot tolerate behaviour of the type that displayed on 2 September 2019 and as a result after considering matters and discussing them with the General Manager, it was decided that decision was the correct decision and that had to be dismissed. I therefore typed up a formal dismissal letter and that letter was subsequently provided to

18. The termination letter itself was dated 2nd September 2019 and was not titled and stated:

"It is with regret that we must formally inform you that we have terminated your employment with effect from 2nd September and accordingly today is your last day with the company.

We have determined that you are guilty of serious misconduct within the meaning of section 52(1) (a) & (c) of the Labour Law (2011 Revision) attached. On 2nd September you got into a heated confrontation with your supervisor after asked you to work with another team member and you refused to do so and just stood there doing nothing. When the General Manager asked you to clock out go home and calm down and come back to work tomorrow. You then started shouting and using inappropriate language and causing a scene, where told you that you were excused from your employment with the company and you should leave the property.

This act of misconduct is unacceptable and we cannot reasonably be expected to tolerate a repetition."

19. The Complainant's version of events and the Employers are not materially different apart from the description of the language and mannerisms used between the parties.

The Tribunal Observations

20. This is an unfortunate ending the employment relationship. Other than some the friction between the Complainant, supervisor and Manager.

21. The Tribunal noted that the Complainant had received a written warning on June 12, 2019 with subject line "Record of Employee Constructive Review". On this occasion the memorandum was to serve as a written warning due to the Complainant's unexcused absence from work for two consecutive days as required to. The Complainant refused to sign as stated by [redacted] note and signature to the memorandum notice letter.
22. The Tribunal noted that the Complainant had also received a verbal warning on August 5, 2019 with subject line "File Note, Verbal Warning – [redacted]". On this occasion the note was to serve as a verbal warning due to the Complainant's failure to comply with the use of Bluetooth in and talking on the phone while working in the [redacted]. The Complainant did not sign the file note.
23. Dismissing an employee is a remedy of last resort, summary dismissal will only be warranted where an employee has committed gross misconduct, i.e., he has committed a fundamental breach of his contract of employment. Most acts of misconduct by employees at work may merit a warning or other sanction short of dismissal but will not merit summary dismissal and only the most serious behaviour by an employee entitles an employer to dismiss summarily.
24. In this case the facts are that the Complainant had been insubordinate, disrespectful, rude, aggressive, sought to undermine the authority of both [redacted] Supervisor and Manager.
25. We accept that [redacted] actions were not in accordance with accepted practice and that [redacted] was aware of this at the time [redacted] did it, but the question remains as to whether the conduct admitted and accepted was of the most serious nature entitling the Employer to dismiss an employee summarily?
26. In arriving at the answer, we remind ourselves that it is not for the employment tribunal to substitute its own view for that of the employer when considering the fairness of a dismissal. Instead, it should determine whether the employer's actions fell within the range of reasonable responses of a reasonable employer. In other words, even if the tribunal would not themselves have decided to dismiss in the circumstances facing the employer, the question is whether no reasonable employer could have decided to dismiss in those circumstances.
27. Even whilst restricting ourselves to that role, we do believe that the Employer acted reasonably in terminating the Complainant in the circumstances.
28. We also find a failing with the Employer's investigations. It is not acceptable, though given the circumstance not fatal, that no interview was conducted with [redacted] on the 2nd September, 2019 therefore not

allowing a chance to refute the statements generated by Supervisor and Manager. The failure to allow to refute the statements of , and x and to address their concerns on this issue makes Employer fall foul of their duty to carry out an investigation that was fair in the circumstances.

29. Finally, we note that the decision to terminate was communicated on the 2nd September 2019. Section 52(1) of the Act states:

An employer may terminate forthwith the employment of an employee where the employee has been guilty of misconduct in or in relation to his 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 himself in such a manner as clearly to demonstrate that the employment relationship cannot reasonably be expected to continue.

30. Section 52(1) sets out the test which is to be applied to a summary dismissal for misconduct under section 51(1)(a) of the Act. Accordingly, if an employer can in fact demonstrate that reasonably believed the employee to be guilty of serious misconduct, and in fact dismisses the employee as soon as could objectively have formed that "reasonable belief" then the employee is fairly dismissed.

31. Therefore, even if the conduct complained of which formed the basis for the dismissal was "misconduct in or in relation to employment so serious that the employer cannot reasonably be expected to take any course other than termination misconduct", the Tribunal considers that the Employer did not fail to dismiss the Employee "forthwith" on discovering the Employee's breaches of employment.

32. We do find that the Employer acted forthwith and thus this provides another further reason for the decision arrived at by the Tribunal that the Complainant was fairly dismissed.

33. Without any evidence in rebuttal from the Complainant other than above statements, the letter could be said to satisfy the Tribunal on the balance of probabilities that the reason was as given (i.e. misconduct) and that this is a reason which is a potentially fair reason as falling within the scope of Section 51 of the Law.

Decision

34. Based on the above the Tribunal finds that the Complainant's dismissal was fair and the Tribunal makes no order or award.

Appeals

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

Noel Webb

Noel Webb, Chairperson

Signed this 9th day of April 2021

