



# Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

20 June, 2023

Via Email

Via Email

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of **22 May, 2023**, in the matter of \_\_\_\_\_ is provided in accordance with section 75 of the Labour Act.

## Decision

The Tribunal unanimously agreed that the constructive dismissal was unfair. The Tribunal equally finds the Respondent did not properly follow standard procedure when she arbitrarily decided to terminate the Complainant employment upon merging of the same job position. The Tribunal found that downsizing may have been necessary and considered its merits, but noted redundancy should be focused on the position of employment as stated in the Cayman Islands Labour Act and not particular the duties. The Tribunal carefully noted that the using of Redundancy to terminate the employment of the Complainant was wrongfully applied in this case.

The Tribunal is equally aware there efficiently are established laws and standard procedures in the Labour Act (2021 Revision) for Employers to adhere to when considering such informed decisions. The Tribunal also notes that many Employers erroneously at times use different sections of the Labour Act to render official decisions. Therefore, the Tribunal sufficiently recognizes the Complainant's reasonable claims for Unfair Dismissal under Section 51 (2) & (3) of the Labour Act (2021 Revision) is valid and shall be rewarded as dutifully follows:

## Orders/Awards

The Tribunal hereby orders the Respondent to pay for unfair dismissal to the Complainant the sum of KYD\$ \_\_\_\_\_ that constitutes \_\_\_\_\_ week for every \_\_\_\_\_ of continuous employment as guided by Section 40 (1) & Section 41 (1) of the Labour Act (2021 Revision).

The absolute amount rewarded by the Tribunal for the Complainant comprise a total 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

Department of Labour & Pensions  
2<sup>nd</sup> 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](mailto:kara.connor@gov.ky),  
Labour Tribunal General Email: [labourtribunaldlp@gov.ky](mailto:labourtribunaldlp@gov.ky)



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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:

**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)

Please be guided accordingly.

Faithfully,

  
Kara Connor  
Labour Tribunal Secretary



<b>LABOUR TRIBUNAL</b> <i>Extraordinary Gazette No. 98/2022</i>		
<b>Chairpersons</b>	<b>Deputy Chairpersons</b>	<b>Members</b>
Robert Jones (Resigned) Gregery Barnes Jennodell Myles Samantha Bennett	None	Davina Ebanks Vaccianna Franklin Shelly-Ann Davis
<b>LABOUR TRIBUNAL</b> <i>Extraordinary No.14/2023</i>		
<b>Chairpersons</b>	<b>Deputy Chairpersons</b>	<b>Members</b>
Donnette Goddard (Resigned)	Michelle Coleman Cashema Clarke Angelita Edwards Vincent Frederick Nadine McBean	Nanalie Cover Pamela Duncan Jaron Leslie Harwell McCoy Petrina Moore

**Matter:**

**Date of Hearing:** 22 May 2023

**Location:** **Via Zoom**

**Labour Tribunal Panel**

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

**Labour Tribunal  
Secretary:** Kara Connor

**Employee/Complainant:**

**Employer/Respondent:**

**Observers:** It is noted that only the Respondent was in attendance and represented by Mrs. Leonora Mendoza-Hydes, and neither party was represented by legal counsel.

## 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 Respondent"). The Complaint was heard by the Tribunal on the 5/22/2023, commencing at 10:30am via a Zoom virtual meeting in Grand Cayman.
2. The Complaint was filed in this matter by the Complainant on 21st July 2022. The Tribunal reviewed and found there was enough evidence on file to conclude a decision on this matter.

## Background

The Tribunal carefully noted the Complainant commenced employment as a \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_, which subsequently terminated on \_\_\_\_\_, an employment period of approx. \_\_\_\_\_.

The Complainant typically received an earned average of \_\_\_\_\_ operational hours/monthly at a standard rate of KYD\$: \_\_\_\_\_ /monthly, and overtime, applicable if and when needed by operational management.

The Tribunal also noted that an official employment contract, and a termination letter were properly provided to the Labour Tribunal. The Labour Tribunal will promptly proceed into the practical matters of **Unfair Dismissal** and shall faithfully rendered an absolute decision soundly based on the documentary evidence on official file, the verbal testimony of the Respondent and in the absence of Complainant.

**The Tribunal took note of the following issues that undoubtedly affected the functional relationship between the Respondent and the Complainant. These invariably include but are unlimited to the following:**

1. The apparent decision by \_\_\_\_\_ of executive directors mandating It's appropriate management to sufficiently reduce cost and to streamline the school operations.
2. The lawfulness that determined if a redundancy in fact was necessary before & upon termination.
3. The verbal & physical testimony of the Respondent.
4. The material evidence of the Complainant.
5. The verbal & documentary evidence surrounding why the Complainant wasn't placed into another position within the school.
6. All other evidence on official file.

The aforementioned issues realistically are of the utmost importance for the Tribunal to gallantly help correctly determine the effective relationship that inadvertently led to the ultimate dismissal of the Complainant.

The Tribunal unanimously formed the following timeline in reaching a conclusion:

## Summary of Evidence

The Complainant claims \_\_\_\_\_ was unfairly dismissed from \_\_\_\_\_ specific position as a \_\_\_\_\_ and was never given the opportunity to be placed in another department within the school.

The Complainant claims that the ultimate decision to in fact make \_\_\_\_\_ official position redundant was hasty, disrespectful after being informed ' \_\_\_\_\_ would lose their jobs'.

The Complainant claims that qualifications were questioned in an organizational meeting with the which was held on May 22, 2022.

The Respondent claims that administration and local operations and were realistically under official scrutiny from of elected Governors after the previous failed school inspection. The Board of elected then mandated management to adequately review the strategic needs for the upcoming which effectively would overhaul the continuous operations and management of

The Respondent eloquently stated that was given full permission to ensure the became more effective and profitable in the efficient delivery of its essential services. This equally had to naturally fall in-line with the teaching standards set by the as would have been carefully outlined in the inspection report.

The Respondent carefully noted the Complainant could not be placed in another prominent position because there merely were no openings present. The Respondent was reasonably asked by the Tribunal if any other member of was made redundant and was duly informed by the Respondent "No" but other staff contracts were renewed and some not.

The Respondent verbally noted that during the comprehensive review & earnest discussion with the that it was discovered that the Complainant was teaching in a position that did not suit qualifications. However, briefly noted that the other grade one legitimately did indeed possessed the correct qualifications naturally needed for the official position; and the gradual process of resolutely determining which grade one positions would become redundant was apparent. The Respondent further stated there no proper position suited the necessary qualifications of the Complainant because the position could have been given based on qualifications were at present accepted by other qualified carefully noted this would have by heart been the logical reason the specific Complainant qualifications undoubtedly constitute eager questioning by the during candid interview on May 22, 2022.

In the descriptive letter dated August 23, 2022, issued by to the Department of Labour, it stated the Complainant was made redundant under the Labour Act (2021 Revision) for organizational reasons. The Tribunal unanimously concluded the reviewing of the present evidence respectfully submitted by the Respondent and the Complainant and took the necessary time to render the decision as follow:

## The Law

### PART V - Severance Pay

#### Right to severance pay generally

40. (1) Every employee whose term of continuous employment with an employer and any predecessor-employer has in aggregate exceeded one year is entitled to receive, in addition to any other payments which may be due to that employee, upon termination of that person's employment by that person's employer for any reason, other than a dismissal which is within paragraph (a), (b) or (c) of section 51(1), severance pay, being payment in money calculated in accordance with this Part.

(2) In the case of the bankruptcy or winding up of an employer any liability for severance pay shall be paid in priority to all other debts, secured or unsecured, and shall be paid in full unless the property available is insufficient to meet them.

(3) Severance pay shall be payable to an employee for the full period of that person's employment, including any period of employment prior to the 1st March, 1988, if that employment is terminated on or after the 1st March, 1988.

### **Computation of severance pay**

41. (1) Severance pay shall consist of one week's wages, at the employee's latest basic wage, for each completed twelve month period of that person's employment with that person's employer and any predecessor-employer.

(2) In the case of part-time employees their entitlement to severance pay shall be calculated on the basis of the ratio that their actual hours of employment bear to the standard work week.

### **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.

## The Tribunal's Findings

The Tribunal found that the Respondent failed in her moral duties to properly handle the situation as guided by Section 51 (1), (2) & (3) of the Labour Act (2021 Revision) that deals with Redundancy.

The Tribunal equally considered the Respondent's position and unique situation while assuming the ultimate responsibility to enhance the school's performance, system and plans for the forthcoming year. However, one cannot merely apply a section of the Labour Act without proper merit and due process. The Tribunal noted a decision was made to combine the \_\_\_\_\_ positions into one. However, combining the two classes into one nevertheless required the need for Respondent to retain the position of a \_\_\_\_\_

The position in itself of \_\_\_\_\_ was not made redundant since it is still occupied by the remaining \_\_\_\_\_ r who was not dismissed. Therefore, the Tribunal finds the termination of the Complainant from \_\_\_\_\_ position was unfair. Section 51 (2) states "*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."*

The Tribunal also took into consideration the Complainant's working documented history while presumably not possessing the rightful qualifications for the official position \_\_\_\_\_ had naturally occupied during \_\_\_\_\_ tender and invariably found:

1. The Complainant typically followed proper procedure when she I \_\_\_\_\_ submitted her academic qualifications upon legitimately applying for the official position at \_\_\_\_\_
2. \_\_\_\_\_ was willingly accepted into the official position of \_\_\_\_\_ and the \_\_\_\_\_ genuinely had no previous issued with \_\_\_\_\_ performance during the specific period as per factual evidence promptly produced.
3. The Complainant may have been selected for constructive dismissal based on not having the correct qualifications, This promptly led the Tribunal to satisfactorily conclude no unique opportunity was properly presented to the Complainant to rightful gain the correct qualifications needed during \_\_\_\_\_ tender as a \_\_\_\_\_
4. The official position exclusively became a key issue once the Board of elected \_\_\_\_\_ promptly decided active management needed to carefully review the \_\_\_\_\_ strategic needs for the upcoming \_\_\_\_\_, \_\_\_\_\_ which effectively would overhaul the continuous operations and management of \_\_\_\_\_

## Decision

The Tribunal unanimously agreed that the constructive dismissal was unfair. The Tribunal equally finds the Respondent did not properly follow standard procedure when \_\_\_\_\_ arbitrarily decided to terminate the Complainant employment upon merging of the same job position. The Tribunal found that downsizing may have been necessary and considered its merits, but noted redundancy should be focused on the position of employment as stated in the Cayman Islands Labour Act and not particular the duties. The Tribunal carefully noted that the using of Redundancy to terminate the employment of the Complainant was wrongfully applied in this case.

The Tribunal is equally aware there efficiently are established laws and standard procedures in the **Labour Act (2021 Revision)** for Employers to adhere to when considering such informed decisions. The Tribunal also notes that many Employers erroneously at times use different sections of the Labour Act to render official decisions.

Therefore, the Tribunal sufficiently recognizes the Complainant's reasonable claims for Unfair Dismissal under Section 51 (2) & (3) of the **Labour Act (2021 Revision)** is valid and shall be rewarded as dutifully follow:

**Orders/Awards**

1. The Tribunal hereby orders the Respondent to pay for unfair dismissal to the Complainant the sum of that constitutes (1) week for every 4 years of continuous employment as guided by Section 40 (1) & Section 41 (1) of the **Labour Act (2021 Revision)**.

The absolute amount rewarded by the Tribunal for the Complainant comprise a total of KYD.

**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.



Vincent Frederick  
Chairperson  
19-Jun-23

