



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

27/21
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: labourtribunal@gov.ky

Labour Tribunal

Monday, 22 February 2021

[REDACTED]
Via Email

[REDACTED]
Via Email

Ref: 26782 -- [REDACTED]

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of Thursday, 28 January 2021, in the matter of [REDACTED], is provided in accordance with section 75 of the Labour Act (2011 Revision).

Decision

Whilst the Tribunal can look at the letter from [REDACTED] and accept that [REDACTED] had a genuine belief that [REDACTED] was guilty of serious misconduct, we are incapable of finding that such belief was formed on reasonable grounds. The lack of oral evidence on behalf of [REDACTED] or indeed written statement from the accountant contribute to this as does the evidence heard from the voice recording.

We therefore find that the employer has not satisfied the Tribunal that the termination was reasonable in the circumstances and [REDACTED] was unfairly dismissed.

[REDACTED] was employed on 21st March 2016 and dismissed on 3rd March 2020. [REDACTED] contract is silent on [REDACTED] notice period and as a result [REDACTED] notice period is one month being the time between pay. Thus for the purposes of calculating [REDACTED] award we consider [REDACTED] true date of termination to be 2nd April 2020 being one month after [REDACTED] wrongful termination.

Orders/Awards

The claim is successful and [REDACTED] is awarded the following:

- severance pay 4 weeks @ \$ [REDACTED]
- unfair dismissal compensation 4 weeks @ [REDACTED]
- Total award \$ [REDACTED]

This is the unanimous decision of the Tribunal.

Right to Appeal

Any person aggrieved by this Tribunal Decision, by virtue of the Labour Act (2011 Revision), 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.



**Labour
Tribunal**
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Direct Ext. (345) 244-4015 Direct Email: kara.connor@gov.ky

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Please direct appeals to:

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

Email: let@gov.ky Alternative Email: labourtribunal@gov.ky

Please be guided accordingly.

Faithfully,

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

Kara Connor

Labour Tribunal Secretary



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Facebook: www.facebook.com/cidepartmentlabourpensions

LABOUR TRIBUNAL <i>Extraordinary Gazette No. 45/2019</i>		
Chairpersons	Deputy Chairpersons	Members
Gregory Barnes James Kennedy Jennodell Myles Kathryn Rowe	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: [REDACTED]
Date of Hearing: 28 January 2021
Location: Main Conference Room, Department of Labour & Pensions

Attendees
The Tribunal
James Kennedy, Chairperson
Ludivene Dilbert, Member
Angelita Edwards, Deputy

For the Complainant
[REDACTED] In person

For the Respondent
Not present
Click here to enter text.
Click here to enter text.
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 [REDACTED] former employer, [REDACTED] "the Employer" or [REDACTED].
2. The Complaint was heard by the virtual video conference Zoom, on 28 January 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 (2011 Revision) ("the Labour Act") and in reaching this Decision, the Tribunal has also carefully considered the evidence, and oral testimony of the Complainant.
5. The Tribunal was satisfied that [REDACTED] had been properly given notice of the date of the hearing and with no request for an adjournment or reason for their absence it was determined to proceed to hear the matter in their absence.

Background

1. [REDACTED] was employed by [REDACTED] under a signed contract of employment dated 27 March 2016. [REDACTED] signed a new contract of employment in 2019 with effective date of 22 January 2019 superseding the previous.
2. [REDACTED] salary was \$[REDACTED] per annum at that time and at the time of [REDACTED] termination [REDACTED] asserts [REDACTED] was paid \$[REDACTED] per month.
3. [REDACTED] had no warnings on [REDACTED] file at the date of [REDACTED] termination.
4. [REDACTED] was dismissed by way of termination letter dated 3rd March 2020. The circumstances surrounding the dismissal are set out in a letter from [REDACTED] to the Department dated 11 August 2020 and in summary are:
 - On 28 February [REDACTED] had a loud disagreement with the accountant at the office
 - This was as a result of [REDACTED] being asked to do a delivery to [REDACTED] which wasn't possible given [REDACTED] other tasks.
 - This was overheard by the [REDACTED], [REDACTED] who spoke with [REDACTED] at the time.
 - Later the same day [REDACTED] witnessed a further disagreement between the same persons. This was as a result of [REDACTED] finding out that the accountant had deducted some pay from [REDACTED] to repay a debt to the company and [REDACTED] becoming loud, disrespectful and upset in the office and in the presence of a number of staff and, according to [REDACTED], customers on the phone.
 - As a result of both incidents, [REDACTED] determined that [REDACTED] should be given a written warning and later the same day invited [REDACTED] to a meeting to discuss his conduct and reprimand [REDACTED]. At the meeting [REDACTED] described [REDACTED] as demonstrating the same behaviour as earlier and that the meeting went badly so she ended the meeting by giving him a warning letter.
 - As a result of the above she decided that he should be terminated and a separation letter was drafted and given to him on Monday 2nd March.

5. The actual termination letter was dated 3rd March 2020 and this letter focused on the alleged disrespectful behaviour at the meeting with [REDACTED] (calling [REDACTED]).
6. As set out above, [REDACTED] decided not to appear before the Tribunal to explain their side of events.
7. For his part [REDACTED] did attend the Tribunal and gave evidence. [REDACTED] stated that [REDACTED] did have a conversation with the accountant but denied being arrogant or disrespectful and further denied being disrespectful at the meeting with [REDACTED]. [REDACTED] informed the Tribunal that [REDACTED] had recorded a portion of the meeting with [REDACTED] and upon invitation by the Tribunal this was sent to the Tribunal and listened to prior to the close of proceedings.

The Tribunal Observations

8. Section 75(6) of the Labour Act specifically provides that 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.
9. Thus [REDACTED] do not have to attend to have their position considered but nonetheless it is clearly beneficial if a party wishing to have a finding in their favour does so in order to explain fully the facts and circumstances of the case and address any arguments put forward by the other side.
10. In this case there is a live factual dispute, the employer [REDACTED] states that [REDACTED] across 3 incidents on 28th February 2020, conducted [REDACTED] in such a manner that the employment relationship could not continue.
11. The thrust of their case was that [REDACTED] was rude and insubordinate to senior members of staff.
12. The facts relied upon are disputed by [REDACTED] accepted that conversations were had with both the accountant and [REDACTED] but disputes [REDACTED] behaviour fell short of expectation.
13. The only contemporaneous evidence the Tribunal had was the voice recording of the meeting between [REDACTED] and [REDACTED] and after listening to this admittedly not complete recording we heard nothing of a nature that suggested [REDACTED] complaints were well founded.
14. The question of whether the decision to terminate was reasonable is to be determined in accordance with the equity and substantial merits of the case having regard to all the circumstances. Furthermore, when considering this the Tribunal will look at:
 - If the employer had a genuine belief in the employee's guilt
 - If that belief was formed on reasonable grounds
 - If the employer carried out a reasonable investigation
15. Whilst the Tribunal can look at the letter from [REDACTED] and accept that [REDACTED] had a genuine belief that [REDACTED] was guilty of serious misconduct, we are incapable of finding that such belief was formed on reasonable grounds. The lack of oral evidence on behalf of [REDACTED] or indeed written statement from the accountant contribute to this as does the evidence heard from the voice recording.

16. We therefore find that the employer has not satisfied the Tribunal that the termination was reasonable in the circumstances and [REDACTED] was unfairly dismissed.

17 [REDACTED] was employed on 21st March 2016 and dismissed on 3rd March 2020. [REDACTED] contract is silent on [REDACTED] notice period and as a result [REDACTED] notice period is one month being the time between pay. Thus for the purposes of calculating [REDACTED] award we consider [REDACTED] true date of termination to be 2nd April 2020 being one month after [REDACTED] wrongful termination.

Decision

18. The claim is successful and [REDACTED] is awarded the following:

- severance pay 4 weeks @ [REDACTED]
- unfair dismissal compensation 4 weeks @ \$ [REDACTED]
- Total award \$ [REDACTED]

19. This is the unanimous decision of the Tribunal.

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 19th day of February 2021

