



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

Tuesday, 16 January 2024

c/o Alastair David
HSM Chambers
Via Email

Via Email

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of 21 November, 2023, in the matter of [REDACTED], is provided in accordance with section 75 of the Labour Act.

Decision

On the evidence before the Tribunal [REDACTED] had little to no reason to legitimately dismiss [REDACTED]. It appears that [REDACTED] had decided that if it was to dismiss [REDACTED] it was necessary to dismiss [REDACTED] as well. This could have been for the reason that they were [REDACTED] and the employment relationship would be irreparably fractured by the dismissal of [REDACTED] or because the employer believed [REDACTED] was colluding in the setting up of a competing business (being one of the reasons cited as cause for dismissing [REDACTED]). The Tribunal doesn't need to decide the motive as it is ultimately irrelevant.

This is a textbook case of unfair dismissal, and the employer has failed to show demonstrate any honest belief in misconduct, failed to carry out any investigation at all and has not acted reasonably in the circumstances of the case.

Orders/Awards

[REDACTED] was unfairly dismissed.

[REDACTED] is awarded [REDACTED] for severance giving a total award of [REDACTED].

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.

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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**

CAYMAN ISLANDS GOVERNMENT

Please direct appeals to:

Secretary to The Labour Appeals Tribunal

2nd Floor Mid Town Plaza

Elgin Avenue, George Town

Grand Cayman KY1-9000

Cayman Islands

Tel: (345) 945-8960

Email: Lat@gov.ky Alternative Email: labourtribunal@dlp.ky

Please be guided accordingly.

Faithfully,

Kara Connor
Labour Tribunal Secretary



Department of Labour & Pensions

Cayman Islands Government

2nd Floor, Mid Town Plaza

Elgin Avenue, George Town

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Grand Cayman KY1-1105

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LABOUR TRIBUNAL		
<i>Extraordinary No.14/2023</i>		
Chairpersons	Deputy Chairpersons	Members
Donnette Goddard	Michelle Coleman Cashema Clarke Angelita Edwards Vincent Frederick Nadine McBean	Nanalie Cover Pamela Duncan Jaron Leslie Harwell McCoy Petrina Moore
LABOUR TRIBUNAL		
<i>Extraordinary Gazette No. 98/2023</i>		
Chairpersons	Deputy Chairpersons	Members
Robert Jones (Resigned) Gregery Barnes Jennodell Myles Samantha Bennett	None	Davina Ebanks Vaccianna Franklin Shelly-Ann Davis
LABOUR TRIBUNAL		
<i>Meeting No. 100/2023</i>		
Chairpersons	Deputy Chairpersons	Members
James Kennedy Keith Myers	None	None

Decision

Matter:

Date of Hearing:

Location:

21 November 2023

Department of Labour & Pensions, Midtown Plaza, George Town, Grand Cayman

Attendees

The Tribunal

James Kennedy, Chairperson

Vincent Frederick, Deputy

Davina Ebanks, Member

For the Complainant

Alastair David, HSM Chambers

For the Respondent

Self-Represented

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 former employer, ("the Employer" or '.....').
2. The Complaint was heard by Zoom, on 21 November 2023, commencing at 10.30 a.m.

Background

3. was employed from giving of service and filed complaint on the 7th of March 2018.
4. salary at the date of termination was month or per week.
5. was employed at the same time as and was also terminated on the of also brought claims arising from termination and both matters were heard together. Despite this, both claims are the subject of separated decisions as each matter has to be decided on its own facts.
6. was dismissed by letter dated 9 December 2017. The letter states that had conducted in such a manner that cannot reasonably be expected to continue the employment relationship. The letter then cited several categories of behaviour:
 - Unprofessional behaviour and talk
 - Undermining efforts
 - Rudeness and Insubordination
7. The specifics of the allegations are outlined in the termination letter and amount to a collection of gossipy reports of alleged conversations that vaguely impact negatively. For example, it is alleged collected a new employee from the airport in Fall 2016 (over one year prior to dismissal) and said that was never at work. also references emails warning of behavioural issues and lack of professionalism from May and November 2017, neither of which alleged conduct resulted in disciplinary action at the time.
8. submitted a 9-page statement as evidence, and this was adopted as evidence at the hearing.
9. In defence to these allegations, submitted and adopted as evidence a witness statement dated 17th November 2023 in which rebutted all the allegations to the extent that it is necessary. The rebuttals were not significantly challenged in cross examination and even allowing for the lack of legal representation for it was impossible for the Tribunal to find that the allegations had any real substance.

The Tribunal Observations

10. To fairly dismiss an employee summarily in accordance with the protections afforded by the Labour Act you have to have not only very strong reason to do so but must also follow a fair procedure.
11. On the evidence before the Tribunal [redacted] had little to no reason to legitimately dismiss [redacted]. It appears that [redacted] had decided that if it was to dismiss [redacted], it was necessary to dismiss [redacted] as well. This could have been for the reason that [redacted] and the employment relationship would be irreparably fractured by the dismissal of [redacted] or because the employer believed [redacted] was colluding in the setting up of a competing business (being one of the reasons cited as cause for dismissing [redacted]). The Tribunal doesn't need to decide the motive as it is ultimately irrelevant.
12. In this particular case, when there is an examination of the facts relied upon and the manner in which the exercise of termination was conducted it is clear that this was not a case that fell into the category of cases where a termination could have been said to be fair.
13. The specifics of the allegations against [redacted] as contained in the termination letter contained allegations that were simply entirely stale dated, minor in nature or without an iota of corroborative evidence. Even at their height it would be impossible to describe them as conduct which would warrant summary termination.
14. Furthermore, if [redacted] wished to dismiss summarily, it was incumbent upon [redacted] to conduct a fair investigation into the concerns including presenting [redacted] with the evidence against [redacted] and allowing [redacted] the opportunity to respond before making the final decision. [redacted] in his statement refers to this very need and cites the 3 questions posed in BHS v Burchell (the Burchell test) and whilst [redacted] believes [redacted] carried out a reasonable investigation, the Tribunal does not agree.
15. This is a textbook case of unfair dismissal, and the employer has failed to show demonstrate any honest belief in misconduct, failed to carry out any investigation at all and has not acted reasonably in the circumstances of the case.

Decision

16. [redacted] was unfairly dismissed.

17. [redacted] is awarded [redacted] for severance giving a total award of [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 Law may, within 14 days of notification of the decision, or service of notice, appeal to the Appeals Tribunal.

James Kennedy

James Kennedy, Chairperson

Signed this 10th day of January 2024