



**Labour
Tribunal**
CAYMAN ISLANDS GOVERNMENT

Department of Labour & Pensions
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LABOUR TRIBUNAL		
Chairpersons	Deputy Chairpersons	Members
James Kennedy Jennodell Myles Samantha Bennett Keith Myers	Cashema Clarke Michelle Coleman Angelita Edwards Nadine McBean Vincent Frederick	Nanalie Cover Pamela Duncan Denise Farrington Jaron Leslie Harwell McCoy Jr. Petrina Moore Shelly-Ann Davis Vaccianna Franklin Davina Ebanks

Matter:

Date of Hearing: 11 October 2023

Location: Via Zoom & Department of Labour Conference Room

Labour Tribunal Panel

Acting Chairperson: Angelita Edwards
Chairperson: Jennodell Myles
Deputy Chairperson: Vincent Frederick (Apology)

Acting Labour Tribunal Secretary: Millicent Mathews-Roberts

Employee/Complainant:

Employer/Respondent:

Observers: It is noted that the Complainant attended the meeting in person without any legal representation. It is also noted that the Respondent and his Attorney Mr. Harvel Grant attended via zoom.

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") against [redacted] former employer, [redacted] ("the Respondent"). The Complaint was heard by the Tribunal on the 10/11/2023, commencing at 10:30am via the Labour Department's Conference room and by a Zoom virtual meeting in Grand Cayman.
2. The Complaint was filed in this matter by the Complainant on 4th April 2022. The Tribunal reviewed and found there was enough evidence on file to conclude a decision on this matter.

Background

The Tribunal after carefully questioning both parties, noted the Complainant commenced employment through an informal verbal agreement for [redacted] with a break in employment between [redacted], which subsequently terminated on February 23, 2022 an employment period of approx. Three (3) months. The Complainant typically received an earned average of [redacted] operational hours/weekly at a standard rate of [redacted]

The Tribunal also noted that an official employment contract, and a termination letter were unprovided to the Labour Tribunal. The Labour Tribunal promptly proceeded into the practical matters of Unfair Dismissal and shall faithfully rendered an absolute decision soundly based on the documentary evidence on official file and in light of all verbal arguments made into evidence from the parties involved.

The Tribunal also note the Respondents legal representative statement where [redacted] noted for the record that the previous settlement in [redacted] email to the Director of Labour should've settled the entire legal dispute for this case and is surprise that [redacted] and [redacted] client is now having to attend and defend a case that should have been settled in full and closed. The Tribunal had already noted that upon review of the agreement that the wording was very vague and did not mentioned specifically unfair dismissal. For the record, the Tribunal had previously determined in a sub meeting between both parties that the hearing would be heard as the Complainant wish to pursue [redacted] claim for the flow of natural justice.

The Tribunal took note of the following issues that affected the functional relation between the Respondent and the Complainant. It was noted that there were many mentions of other serious accusations that were deemed sensitive and it was determined by the Tribunal not to be relevant to factual to what may have led up to unfair dismissal. The Tribunal invariably took into consideration to focus on the bullet points below which includes but are unlimited to the following:

1. The absence of a written employment contract stating details of employment.
2. The Complainant employment start date.
3. The effective Complainant break in employment.
4. The effective Complainant date of possible termination.
5. The Respondents claim that it was realistically a verbal fixed-term situation to heartfelty aid a family member for three specific months.
6. The Respondents verbal claim that fixed term for the Complainant was up as per verbal agreement.
7. All other verbal agreements stated and all existing evidence on official file.

The aforesaid issues realistically are of the utmost importance for the Tribunal to gallantly help accurately mould what naturally led to the ultimate termination of the Complainant.

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

Summary of Evidence

The Complainant claims [redacted] was never issued an official contract for employment and was never given notice upon termination. Both parties were challenged, and the Respondent claimed the Complainant was a family member and was only helping [redacted] for [redacted]. In light of this information, the Tribunal retroactively asked the Complainant if [redacted] had asked for a physical contract upon not getting one. The Complainant confirmed [redacted] did not ask the Respondent for an employment contract.

Both official parties amply confirmed that the Complainant start date correctly was on November 22, 2021, at [redacted] and [redacted] was gainfully employed in the suitable position of customer service agent. The Tribunal determined based on verbal evidence from both responsible parties that there was a distinct break in employment between December 22, 2021, until December 31, 2021. The Tribunal also determined that the termination date correctly was on February 23, 2022.

The complainant eloquently stated [redacted] was under the impression, based on verbal communications with the Respondent that [redacted] was assuredly going to be extensively employed and that [redacted] did plead for required hand-out help but for a job. The Respondent's local attorney stated the mutual agreement was verbal and informal and ended as per verbal agreement on February 23, 2022 and that [redacted] notable client under Section 50 and Section 53 of the Labour Act was correct upon the successful termination of the fixed verbal contract.

The Respondent's local attorney also stated that under Section 50, a fixed term contract upon its termination should not be unfair. [redacted] also mentioned that even if that was overruled, Section 53 makes provisions that a local employee typically employed under an academic calendar year is unentitled to unfair dismissal claims.

The Complainant mentioned that the Respondent's behaviour was very disrespectful from upon [redacted] employment and was treated unfairly in [redacted] closing argument.. The Respondent's attorney refutes all of the serious allegation placed on record by the Complainant and strenuously defended [redacted] client record in [redacted] closing argument.

The Tribunal concluded the reviewing of the available evidence submitted by the Respondent and the Complainant and rendered it's decision accordingly.

The Law

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.

Termination for misconduct

52. (1) An employer may terminate forthwith the employment of an employee where the employee has been guilty of misconduct in or in relation to that person's 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 themselves in such a manner as clearly to demonstrate that the employment relationship cannot reasonably be expected to continue; (b) committed a criminal offence in the course of employment without the consent, express or implied, of the employer; (c) behaved immorally in the course of that person's duties; or Labour Act (2021 Revision) Section 53 c Revised as at 31st December, 2020 Page 33 (d) is under the influence of a controlled drug (other than one lawfully prescribed by a health practitioner) or alcohol during the hours of that person's employment. (2) Where an employee commits misconduct in or in relation to that person's employment that is not sufficiently serious to justify that person's employer terminating that person's employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of any further misconduct. (3) Where an employee has been given a written warning under subsection (2), if that person, within twelve months following the receipt of the written warning, commits misconduct of any kind in relation to that person's work, the employer may terminate the employment of the employee, or take such other action as may have been specified in the written warning, without further notice. (4) For the avoidance of doubt, misconduct includes, but is not limited to, absenteeism.

Termination for failure to perform duties in satisfactory manner

53. (1) Where an employee is no longer performing that person's duties in a satisfactory manner, the employer may give the employee a written warning which shall describe in what manner that person's performance is unsatisfactory and state the action the employer intends to take in the event of continuance.

(2) Where an employee has been given a written warning under subsection (1), if that person does not, during the period of one month following the receipt of the written warning, commence performing that person's duties in a satisfactory manner, the employer may terminate that person's employment at the end of that one month period, or

after the end of that period take such other action as may have been specified in the written warning without further notice

The Tribunal's Findings

The Tribunal after deliberating on the tangible evidence on official record hereby finds the Complainant was not unfairly dismissed. The Tribunal also found that the Respondent was correct in ... moral duties in carefully following the necessary guidance of the Labour Act (2021 Revision) under Section 49 (1), (2) & (3) and Section 50 that deals with unfair dismissal.

The Tribunal equally considered the Complainant break in paid employment between ... and ... The Tribunal determined there was indeed a break in continuous employment based on verbal statements made on the effective date of the selective hearing. The Tribunal therefore reasonably calculated the non-break employment period to comparable range from January 1, 2022, up to February 23, 2022. This therefore fell well short of the needed three months of continued employment naturally needed to make a case for unfair dismissal.

Section 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.

The Tribunal finds that Section 50 is applicable as it was determined that the Complainant would have legally concluded his term of employment even if the break in employment did not happen.

Termination after fixed term of employment.

Section 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.

The Tribunal carefully observed the Respondent's attorney statement on Section 50 & 53 in ... logical argument. It was accurately confirmed that Section 53 may have been prominently mentioned in factual error. Section 53 deals with performance issues which unrepresented the principal subject of the evidentiary hearing. Therefore the Section 53 (1) & (2) do not apply.

Section 53 (1) states: *"Where an employee is no longer performing that person's duties in a satisfactory manner, the employer may give the employee a written warning which shall describe in what manner that person's performance is unsatisfactory and state the action the employer intends to take in the event of continuance."*

Section 53 (2) states: *"Where an employee has been given a written warning under subsection (1), if that person does not, during the period of one month following the receipt of the written warning, commence performing that person's duties in a satisfactory manner, the employer may terminate that person's employment at the end of that one month period, or after the end of that period take such other action as may have been specified in the written warning without further notice."*

Decision

The Tribunal unanimously agreed the constructive dismissal was fair. The Tribunal equally finds the Respondent did properly follow standard procedure upon termination of the fixed-term agreement.

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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 invariably found that Section 49 (1) and Section 50 are legally applicable in its factual findings.

Therefore, the Tribunal rightfully dismisses the Complainant's claim for Unfair Dismissal

Orders/Awards

None

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.



Angelita Edwards
Acting Chairperson
11-Nov-23