



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: labourtribunaldlp@gov.ky

Labour Tribunal

06 July 2021

Via Email

Via Email

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of **Thursday, 6 May 2021**, in the matter of _____ is provided in accordance with section 75 of the Labour Act.

Decision

20. The Tribunal notes that the Respondent entered into evidence a copy of a duly signed 'Request to Withdraw/Cancel/Refund an Application' form (the 'Form')
21. Further, the Tribunal notes that the Form was signed by the Respondent on Tuesday 3rd December 2019 (2 business days following the incident on 28th November 2019)
22. The Tribunal also notes that when completing the Form, the Respondent provided that the 28th November 2019 was the effective date to cancel/withdraw the application
23. Finally, the Tribunal notes that the Respondent admits that there was no further contact with the Complainant after the 28th November 2019
24. The Tribunal is of the view that, if the Respondent had not intended to terminate the Complainant, a reasonable employer would have made some effort to contact the Complainant to find out why he was no longer showing up for work.
25. There being no evidence of any efforts to contact the Complainant post the incident on 28th November 2019 and having only waited only 2 business days before submitting a work permit cancellation letter, the Tribunal is inclined to believe that the Complainant was terminated
26. The Tribunal also finds that even if the Respondent intended to make the Complainant's position redundant, _____ ought to have, at a minimum, issue proper notice and pay the Complainant severance pay

Orders/Awards



Labour Tribunal

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27. claim for severance pay succeeds. The Tribunal orders the Respondent to pay the Complainant the sum of CI \$
28. claim for unfair dismissal succeeds. The Tribunal awards the Complainant CI \$ unfair dismissal compensation.
29. The Tribunal recommends the Respondent pay the Complainant CI \$ in lieu of Notice as provided in the contract of employment.

TOTAL ORDER SEVERANCE AND COMPENSATION: \$

Further recommendation: \$

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:

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



Please be guided accordingly.

Faithfully,

Kara Connor
Labour Tribunal Secretary



DEPARTMENT OF LABOUR & PENSIONS

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

Proceedings

Matter:

Date of Hearing: 6 May 2021

Location: Main Conference Room
Department of Employment Relations, 2nd Floor Royal Plaza
Cardinal Avenue, George Town, Grand Cayman

Labour Tribunal Panel

Chairperson: Gregery Barnes
Deputy/Member: Angelita Edwards
Member:

Labour Tribunal Secretary: Kara Connor

Employee/Complainant: (Not in Attendance/Not Represented by Counsel)

Employer/Respondent: (Not in Attendance/Not Represented by Counsel)

Witnesses: N/A

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, I "the Employer" or "the Respondent"). The Complaint was heard by the Tribunal on the 6th May 2021, commencing at 9:30am via the virtual video conference platform Zoom.
2. The Tribunal has reviewed and carefully considered the Complaint and reviewed and carefully considered the written submissions of the Complainant and the written submissions of the Respondent. The Tribunal has also reviewed the relevant sections of the Cayman Islands Labour Law (2011 Revision) ("the Law").

Background

3. ... was employed with
4. ... was employed in the capacity of a , earning ... and working a ... hour work week.
5. ... last day with the Company was

EVIDENCE

6. The Complainant's case is that ... was terminated from ... employment with ... n after a vocal confrontation that occurred at the job site (i.e. ...) between
7. ... that arrived late for work that morning ... said that ... and his co-workers then departed for ... , which was the scheduled work site for the day
8. Upon arrival at the ... , they were approached by ... n who asked them if they had packed the truck with the requisite material for the project. When they told ... no, ... says that ... called them all
9. ... claims that ... then asked ... , in a very calm voice, who ... was talking to?
10. It is ... evidence that the ... or ... usually took on the responsibility of packing the truck.
11. According to ... , while ... headed to the back of the residence, ... asked ... colleagues why ... was upset. ... said that ... turned around and approached ... and told ... to go home and that ... was fired.
12. ... claims that ... then told ... that if ... was being terminated ... needed to be paid. ... says that ... told ... to collect ... cheque from the office.
13. ... agrees that ... attended the Work Site that day. However, ... claims that ... spoke the group of workers about a number of issues, including the fact that they had arrived at the Work Site without the requisite material.
14. ... admits that ... was frustrated because ... and the other workers had attended this specific project earlier in the week and were fully aware of the duties that were to be undertaken.

15. After what describes as a conversation with the workers, he claims that became unhappy and walked away from the project. confirms that requested payment and was advised to collect cheque from the office on Friday.

16. ... denies that told was terminated.

17. ... confirms that the Company had no further contact with after the incident on 28th November 2019.

18. ... case is, as set out in paragraph 5 of letter addressed to the Department of Labour & Pensions dated 28th February 2020 with the subject as 'Complaint by Former Employee', as follows:

" At no point did we indicate to that was fired and following this day we did not receive any further contact from We would note that was due to at which time, due to current work load and ... specific skills set, employment would not have been continued. "

THE LAW

19. The Labour Law (2011 Revision) provides:

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 a failure of the employee to perform his 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 he held without contravention (on his or on the employer's part) of a requirement of this or any other law; or*
- (f) Some other substantial reason*

And under the circumstances the employer acted reasonably...

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 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;*
- (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 his duties; or*
- (d) Is under the influence of a controlled drug (other than one lawfully prescribed by a health practitioner) or alcohol during the hours of his employment.*

The Tribunal's Findings Decision

20. The Tribunal notes that the Respondent entered into evidence a copy of a duly signed 'Request to Withdraw/Cancel/Refund an Application' form (the "Form").
21. Further, the Tribunal notes that the Form was signed by the Respondent on Tuesday, 3rd December 2019 (2 business days following the Incident on 28th November 2019).
22. The Tribunal also notes that when completing the Form, the Respondent provided that the 28th November 2019 was the effective date to cancel/withdraw the application.
23. Finally, the Tribunal notes that the Respondent admits that there was no further contact with the Complainant after the 28th November 2019.
24. The Tribunal is of the view that, if the Respondent had not intended to terminate the Complainant, a reasonable employer would have made some effort to contact the Complainant to find out why [redacted] was no longer showing up for work.
25. There being no evidence of any efforts to contact the Complainant post the incident on 28th November 2019 and having only waited only 2 business days before submitting a work permit cancellation letter, the Tribunal is inclined to believe that the Complainant was terminated.
26. The Tribunal also finds that even if the Respondent intended to make the Complainant's position redundant, [redacted] ought to have, at a minimum, issue proper notice and pay the Complainant severance pay.

Orders/Awards

27. [redacted] claim for severance pay succeeds. The Tribunal orders the Respondent to pay the Complainant the sum of CI \$ [redacted]
28. [redacted] claim for unfair dismissal succeeds. The Tribunal awards the Complainant CI \$ [redacted] unfair dismissal compensation.
29. The Tribunal recommends the Respondent pay the Complainant CI \$ [redacted] in lieu of Notice as provided in the contract of employment.

Appeals

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

Gregory Barnes, Chairperson
Signed this 2nd day of July, 2021

