



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

Wednesday, 12 June 2024

Via Email

Via Email

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of 12 March, 2024, in the matter of [redacted] is provided in accordance with section 75 of the Labour Act.

Decision

When terminating for gross misconduct, the first step is that the Employer must establish that the reason falls within a potentially fair reason.

It is well established that in a case of suspected misconduct the test of fairness is not whether the employer has proved the employee guilty, and still less whether he has done so beyond reasonable doubt, but rather whether the employer genuinely believed on reasonable grounds in the employee's guilt. This involves a threefold test:

- 1) The employer must establish that [redacted] genuinely did believe the employee guilty of the misconduct;
- 2) That belief must have been formed on reasonable grounds; and
- 3) The employer must have investigated the matter reasonably."

If this test is met, the Tribunal need only consider further whether the Employer acted reasonably in the circumstances. In assessing the reasonableness of the decision, it is accepted law that an employment tribunal must not simply substitute its own views for those of the employer and decided whether it would have dismissed on those facts; it must make a wider inquiry, to determine whether a reasonable employer could have decided to dismiss on those facts. The basis for this approach (the 'range of reasonable responses test' is that in many cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view and another quite reasonably take another; the function of a tribunal as an industrial jury is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair; but, if the dismissal falls outside the band, it is unfair.

In this case we find that the Employer met its obligations to dismiss fairly. On the day in question, it carried out sufficient investigation into the alleged misconduct, including speaking to two witnesses. It then met with [redacted] and allowed [redacted] to present [redacted] version of events. They genuinely believed that [redacted] was guilty of serious misconduct and that such belief was based on reasonable grounds after sufficient investigation.

Finally, after hearing the evidence and weighing it up, alongside considering the response of [redacted] to the incident, we can only find that the Employer's response was within the band of reasonable responses. [redacted] clearly responded inappropriately to be asked to move [redacted] car from a place where it should not have been parked. As the employer noted, parking in the wrong place is not a significant matter, but then getting into a verbal altercation with members of the public is. Particularly when wearing a work shirt and the employer was entitled to prefer to version of events of what was said by [redacted] as told by [redacted] over that of [redacted].



Labour Tribunal

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As stated above, it matters not if the Tribunal would have come to the same decision, just that the Employer here was entitled to take the decision that they did.

Orders/Awards

The complaints of _____ are dismissed.

We thank the parties for their patience waiting for this delayed judgment.

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

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@dip.ky

Please be guided accordingly.

Faithfully,

Kara Connor
Labour Tribunal Secretary



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

LABOUR TRIBUNAL <i>Extraordinary No. 14/2023</i>		
LABOUR TRIBUNAL <i>Extraordinary Gazette No. 98/2023</i>		
Chairpersons	Deputy Chairpersons	Members
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

PROCEEDINGS

Matter:
Date of Hearing: 12 March, 2024

Location: Virtual Hearing

Labour Tribunal Panel

Chairperson: James Kennedy
Deputy/Member: Davina Ebanks
Member: -

Labour Tribunal Secretary: Kara Connor

Complainant:

Respondent:

Observers:

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 "I") against his former employer, [redacted] ("the Employer"). The Complaint was heard by the Tribunal on the 3/1/2024 commencing at 10:00am via the virtual meeting platform, Zoom.
2. The Complaint was filed in this matter by the Complainant on the 11th of November 2022 and the Tribunal has reviewed and carefully considered the Complaint and reviewed and carefully considered the materials filed by the parties. In reaching this decision the Tribunal has also reviewed and considered the sworn evidence of the Complainant and the witness called on behalf of the Employer. The Tribunal has also reviewed the relevant sections of the Cayman Islands Labour Act (2021) Revision ("the Act").

Background

3. [redacted] was employed by [redacted] as an apprentice plumber with [redacted] employment date being stated as 21st of February 2020. He was paid [redacted] per hour for a [redacted] week to a total basic weekly wage of [redacted].
4. [redacted] was terminated by letter dated 7th September 2022 for misconduct. The letter stated that the termination was pursuant to s52(1)(a) of the Labour Act i.e. [redacted] had conducted [redacted] in such a manner as clearly to demonstrate that the employment relationship cannot reasonably be expected to continue. The letter went on to detail the specifics of the incident that led to the termination as follows:

Your termination is based on an incident on the 5 September 2022 in the parking lot of the

It was reported by [redacted] personnel that you parked in the parking lot which is private property, and you were told to remove your vehicle and you refused to do so. The report states that this has happened in the past, yet you did so again on the 5 September 2022. In addition to parking on private property on this day, you threatened the individual in saying [redacted] "is ramping with life" and walked away leaving your car on their property. According to your statement, you did not threaten [redacted] but asked [redacted] "if I am parking inside [redacted] gate" and walked off leaving your car behind.

In our investigation regarding this incident, we found out from the property manager that [redacted] also spoke with you about parking issues a few months ago and [redacted] stated that your reply was extremely rude to [redacted] confirmed the altercation on the 5 September 2022 but did not hear the precise words used by you but believes them to be unpleasant based on [redacted] employee being quite upset after you left.

This is unacceptable behaviour and not tolerated by our company.

5. [redacted] was tasked at the time of [redacted] termination with working off [redacted] premises at new build property off [redacted] and [redacted]

in close proximity to It appears that parking was at a premium and employees had to find somewhere to park in order to go the worksite.

6. On the day of the incident, the investigation that occurred was triggered after phoned to complain over the conduct of consistent with the contents of the letter above. The call was taken by
7. After taking the call, called the to verify the complaint and spoke to confirmed that there had been a previous incident with parking on the fire lane in which he was rude and confirmed that she saw the incident today but did not hear the conversation believed it was not pleasant based on mannerisms.
8. After gathering this information, emailed the business owners and relayed the specifics of the incident and stated "in fairness to I will send an updated report after my meeting with and make my final recommendation at that time. - are you ok with a termination of employment?"
9. explained the decision thus conducted f in a disparaging way while representing the company wearing our company uniform and on our company time to members of the public which is not acceptable. This affects our company name and image, and this is not the way we wish to have the public view us or our staff. This is not the way we behave as a company. It is against our company policy and written in our company manual which is given to each employee, explained to each employee and each one signs agreeing to it including
10. was spoken to on the 5th of September and gave version of events to indicted that did park car at and was told to move car and walked away without moving car and went to the jobsite. Once at the jobsite, left stuff down and told the foreman that had to move car.
11. The meeting ended with being terminated by letter two days later.
12. The evidence at Tribunal was that the meeting didn't go very well, was flippant at the meeting and phone rang several times and it appeared that didn't take the matter very seriously and it appears that this lack of understanding of the seriousness of the matter fed into the decision-making process. did deny threatening the maintenance manager. explained at Tribunal that was dismissed because of reaction to being pulled up on the illegal parking and if had just apologised and moved car, no more would have been done.
13. indicated that no previous warnings were on file, but there had been complaints over work in the past and concerns over attitude as well.

Decision

14. When terminating for gross misconduct, the first step is that the Employer must establish that the reason falls within a potentially fair reason.

15. It is well established that in a case of suspected misconduct the test of fairness is not whether the employer has proved the employee guilty, and still less whether has done so beyond reasonable doubt, but rather whether the employer genuinely believed on reasonable grounds in the employee's guilt. This involves a threefold test:
- 1) The employer must establish that ... genuinely did believe the employee guilty of the misconduct;
 - 2) That belief must have been formed on reasonable grounds; and
 - 3) The employer must have investigated the matter reasonably."
16. If this test is met, the Tribunal need only consider further whether the Employer acted reasonably in the circumstances. In assessing the reasonableness of the decision, it is accepted law that an employment tribunal must not simply substitute its own views for those of the employer and decided whether it would have dismissed on those facts; it must make a wider inquiry, to determine whether a reasonable employer could have decided to dismiss on those facts. The basis for this approach (the 'range of reasonable responses test' is that in many cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view and another quite reasonably take another; the function of a tribunal as an industrial jury is to determine whether in the particular circumstances of each case the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band, the dismissal is fair; but, if the dismissal falls outside the band, it is unfair.
17. In this case we find that the Employer met its obligations to dismiss fairly. On the day in question, it carried out sufficient investigation into the alleged misconduct, including speaking to two witnesses, it then met with and allowed to present version of events. They genuinely believed that was guilty of serious misconduct and that such belief was based on reasonable grounds after sufficient investigation.
18. Finally, after hearing the evidence and weighing it up, alongside considering the response of to the incident, we can only find that the Employer's response was within the band of reasonable responses. , clearly responded inappropriately to be asked to move car from a place where it should not have been parked. As the employer noted, parking in the wrong place is not a significant matter, but then getting into a verbal altercation with members of the public is. Particularly when wearing a work shirt and the employer was entitled to prefer to version of events of what was said by as told by over that of a.
19. As stated above, it matters not if the Tribunal would have come to the same decision, just that the Employer here was entitled to take the decision that they did.

Orders/Awards

20. The complaints of are dismissed.
21. We thank the parties for their patience waiting for this delayed judgment.

Appeals

The Tribunal's decision, enforcement and appeals are governed by section 75 to 78 of the Labour Act. Any persons aggrieved by this Tribunal decision by virtue of section 78 of the Labour Act may, within 14 days of notification of the decision, or service of notice, appeal to the Appeals Tribunal.



James Kennedy,
Labour Tribunal Chairperson

Dated 10th June 2024