



# Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

8

28<sup>th</sup> March, 2023

Via Email

c/o Barton Attorneys  
Via Email

228588 /

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of 7 March, 2023 continued on 10 March, 2023, in the matter of \_\_\_\_\_, is provided in accordance with section 75 of the Labour Act.

## Decision

1. If an employer does not investigate properly, it may still believe in the employee's guilt, but such a subjective belief does not pass the Burchell test.
2. In this case the Employer claims that the Complainant was guilty of misconduct so serious that the employment relationship could not reasonably be expected to continue. However, since the Employer did not come to that decision having carried out a reasonable investigation, it cannot be said that it was acting reasonably as required by section 51(1) or that its decision was in accordance with equity and the substantial merits of the case (section 51(3)). A simple telephone call from HR to the Complainant on the morning of 29<sup>th</sup> October, 2021 could have changed this. Therefore, the Tribunal finds that the Complainant was unfairly dismissed.
3. Based on the above the Tribunal is satisfied that the decision to dismiss does fall outside the band of reasonable responses that an employer could choose from.
4. \_\_\_\_\_ claims for severance pay and unfair dismissal succeeds.

## Orders/Awards

Severance Calculation:

\$ \_\_\_\_\_

previously paid =

Severance Ordered: \$ \_\_\_\_\_

Unfair Dismissal Compensation: \_\_\_\_\_

= \$ \_\_\_\_\_

Compensation Ordered: \$ \_\_\_\_\_

The Tribunal hereby awards the total amount of \$ \_\_\_\_\_ to the Complainant.

## 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



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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**

2<sup>nd</sup> Floor Mid Town Plaza

Elgin Avenue, George Town

Grand Cayman KY1-9000

Cayman Islands

Tel: (345) 945-8960

Email: [Lal@gov.ky](mailto:Lal@gov.ky) Alternative Email: [labourtribunal@dlp.ky](mailto:labourtribunal@dlp.ky)

Please be guided accordingly.

Faithfully,

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Kara Connor

Labour Tribunal Secretary



# Labour Tribunal

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<b>LABOUR TRIBUNAL</b>		
<i>Extraordinary Gazette No. 98/2022</i>		
<b>Chairpersons</b>	<b>Deputy Chairpersons</b>	<b>Members</b>
Robert Jones (Resigned) Gregery Barnes Jennodell Myles Samantha Bennett	None	Davina Ebanks Vaccianna Franklin Shelly-Ann Davis
<b>LABOUR TRIBUNAL</b>		
<i>Extraordinary No.14/2023</i>		
<b>Chairpersons</b>	<b>Deputy Chairpersons</b>	<b>Members</b>
Donnette Goddard (Resigned)	Michelle Coleman Cashema Clarke Angelita Edwards Vincent Frederick Nadine McBean	Nanalie Cover Pamela Duncan Jaron Leslie Harwell McCoy Petrina Moore

**Matter:**

**Date of Hearing:** 7 March, 2023, continued 10 March 2023

**Location:** Zoom Virtual Meeting Platform

## Labour Tribunal Panel

**Chairperson:** Vincent Frederick, Acting Chairperson  
**Deputy/Member:** Angelita Edwards  
**Member:** Vaccianna Franklin

**Labour Tribunal Secretary:** Kara Connor

**Employee/Complainant:** The Complainant was not in attendance

**Employer/Respondent:** The Respondent was represented by Richard Barton of Barton Attorneys  
The Respondent called the following Witnesses

**Observers:** Alyssa Hererra of Barton Attorneys

## Introduction

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 " ") against [redacted] former employer, [redacted] (or "the Employer" or "the Respondent"). The Tribunal convened to hear the matter on the 7<sup>th</sup> March, 2023, commencing at approximately 10:45am, the proceeding were incomplete and the Tribunal adjourned around 2pm. The Tribunal reconvened on 10<sup>th</sup> March, 2023 for closing arguments. The proceedings were held virtually, via Zoom, with secured meeting registration details and login credentials being sent in advance of the hearing to the involved parties.

## Background

1. The Complaint was filed in this matter by the Complainant on 12 November, 2021.
2. The Complaint was referred to the Tribunal on 14 July, 2022.
3. Scheduling efforts commenced with first notice being sent on or around 19 July, 2022. After several adjournments for various reasons the hearing date of 7 March, 2023 was fixed and notice served on both parties.
4. The proceedings of 7 March, 2023 convened at approximately 10:45am.
5. The Tribunal noted the Complainant's email notifying of his absence and he did not object to the proceedings moving forward as scheduled.
6. Counsel for the Respondent raised that there would be notable challenges in testing the veracity of the Complainant's statements by virtue of cross examination and that the challenge for the Tribunal and Respondent would be to undermine the contents of the statements procedurally without the benefit of the Complainant testifying.
7. The Tribunal asked Counsel for the Respondent whether they were seeking an adjournment or whether they were prepared to proceed in absence of [redacted] to which Counsel requested a 15 minute adjournment to confer with [redacted] client.
8. At approximately 11:15am the Respondents were readmitted to the proceedings at which time the Secretary confirmed to Counsel that she had received Counsel's email stating that the Respondent was prepared to proceed in absence of the Complainant and shared the contents thereof with the Tribunal an email from Counsel.
9. The proceedings of 7 March, 2023 were adjourned a 2:00pm with the agreement to reconvene for closing arguments on 10 March, 2023 at 11:00am.
10. The Tribunal reconvened as planned on 10 March, 2023.
11. In making its decision, the Tribunal has reviewed and carefully considered the complaint and written representations made by the Complainant as [redacted] was not in attendance, the Tribunal also reviewed and carefully considered oral and written representations made by the Employer, as well as written closing submissions made by the Complainant and oral closing submissions made by Barton Attorneys on behalf of the Respondent. In reaching this decision the Tribunal has also reviewed and carefully considered the sworn evidence of the Respondent, any previously submitted and evidence

and witness statements all of which were disclosed and the witnesses called on behalf of the Respondent.

## Summary of Evidence

### Witness Statements

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Counsel for the Respondent requested the opportunity to probe what the Respondent viewed as deficiencies in the Complainant's statement and challenge the information sequence by sequence and set the Complainant's statement aside.

The Tribunal responded that [redacted] was not present to be cross examined, and also had the same difficulty in challenging the Respondent's, statements as such it would not be natural justice to simply have statement simply set aside.

### Termination Letter

The termination letter was dated 29<sup>th</sup> October, 2021 and signed by

The termination effected under Section 52(a).

The Complainant was paid [redacted] severance as a part of his final pay.

Your salary of October 27<sup>th</sup> has been transferred to your account. We have deducted your 5<sup>th</sup> week of quarantine from your vacation. You will be paid for one week vacation and [redacted] severance pay with a deduction of the \$ [redacted] that was paid in error. This will be transferred once all [redacted] property has been returned. The medical plan will continue for the month of November however if you wish to continue past the 30<sup>th</sup> of November for up to 3 months you will need to advise [redacted] by the 15<sup>th</sup> of November and make arrangements to pay the policy to [redacted] in full.

Sincerely

Owner

Office Manager

Please sign that you have received this letter and fully understand the contents

Counsel for the Respondent stated that their position was that [redacted] signed the termination letter in capacity as a Lay Person and the [redacted] payment paid to the Complainant was not intended to be severance pay but rather a good will payment because of [redacted] tenure and under no circumstances under any interpretation of the Law could it be deemed severance pay but rather a matter of form and lacking substance. Counsel argued that this was an instance of a lay [redacted] writing a reference to what was "clearly notice" period to soften the blow for an employee at the discretion of an employer and it was not severance pay despite being classified as severance.

The Respondent submits that the termination letter was clear, given the chronology of events [redacted] is paid [redacted] and [redacted] had received [redacted] in excess of [redacted] regular pay in light of a storm that had emerged in August that resulted in additional cleanup works to be undertaken.

The Respondent submits that the termination letter was not dated until 29<sup>th</sup> October, 2021 and was given to on Monday 1<sup>st</sup> November, 2021 in view of the fact that the Complainant returned to work on 21<sup>st</sup> October and failed to account for the overpayment that took place several weeks prior, despite considerable latitude.

The Respondent submits that the company is traditionally a mom and pop blue collar entity that has worked hard to onboard Caymanians and being scarcely resourceful duties are routinely shared where in conjunction with and headed by came to an executive decision consulting the law and articulated a letter to bring to the attention to anyone that reads the letter the basis on which the termination arose having regard to the long history of the Complainant's employment.

The Respondent submits that the Complainant was an asset to and it was not in their favour to dismiss but the dismissal was due to an extraordinary event.

The Tribunal was invited to consider sequentially the evidence in the bundle against the contents of statement.

### Oral Evidence

#### Respondent's Witness

It is the evidence of that the Complainant called at 7am on 29<sup>th</sup> October, 2021 in "a very irate manner" to inform her that had not been paid. stated that the Complainant was "extremely angry" that had not been paid. When asked by Counsel to explain in more detail the exchange with the Complainant, to stated that *was extremely angry that had not been paid* and explained to that had given full evidence and full time to come back with regard to the double payment and had not which left them no alternative but to withhold wages. The wages withheld amounted to \$. that covered a percentage. in evidence stated that *was threatening*, told me to "pay by the end of the day", in a nasty tone, "I have bills to pay, I want my money" stated that this left feeling very uncomfortable, because in view the Complainant was very rude and aggressive in manner.

Upon questioning by Counsel, stated that invited to attend the office to discuss the matter as was extremely heated. stated that the Complainant became "more rude and more nasty" which left feeling "shaken up" because behavior was threatening in view. stated that entered the office where could see that was shaken up when then explained the content of the conversation to In verbal evidence stated that in discussion with explained the build up to the conversation, and the Complainant's lack of response with regard to the overpayment and that couldn't see a way forward with keeping the Complainant employed at which time they both made the decision to terminate the Complainant with the full support of

expressed that was disappointed that spoke to "that way", had been with for 22 years and the Complainant had been with for and obviously knew quite well stating that "I was upset particularly that had spoken to me like that." stated that the Complainant's outburst really left quite upset.

in evidence stated that in view the Complainant's behavior had completely broken down the relationship between and the Complainant.

Upon questioning from the Tribunal, stated that made no attempt to recall the over payment, but was in quarantine with limited resources, it wasn't until bank reconciliation took place "weeks after the double payment had been made" that the second payment was noted.

The Tribunal questioned whether was present with regards to arriving at the decision to terminate the Complainant. stated that phoned after speaking with to let know the conversation and what and had discussed with regard

to moving forward. I stated that when gave the content of the conversation that Yvette) was in "full agreement" with regard to the termination.

The Tribunal asked to confirm whether the incident occurred with and whether was also a part of the termination procedure to which responded yes.

The Tribunal asked whether there was any other consideration, other than automatic termination in light of the mistakes made with wage payments and breakdown in communications during quarantine. stated that it wasn't an accusation but rather a very "fiery, angry, demanding" phone conversation that left feeling threatened. went on to state that the character of over the that knew was very "moody and non-communicative". stated that during the course of created a "horrible atmosphere" in the office with some behaviors bordering on insubordination. Upon questioning whether any of this had been documented responded that it had not. stated that knowing character felt the only action to take place would be termination because "felt the relationship was so broken down that moving forward would not be in the interest of."

The Tribunal asked whether was referring to the working relationship between and the Complainant, or the working relationship between as the employer, and the Complainant to which responded that was "taking the position on behalf of the entire company knowing the character of"

The Tribunal asked whether had the power, within position, to make such decisions on behalf of the company when conflicts arise without the intervention of HR, to which I stated having worked at for over 20 years "this wasn't just a sole decision" had discussed it with and it wasn't a sole decision by , rather it was a decision because the relationship had broken down.

When asked about her previous evidence, stated that she could no longer work with the Complainant, retracted this statement, stating that didn't word her statement correctly and that conferred with and when there were situations where needed to be involved.

The Tribunal asked when recalled having HR intervene in the situation to which stated that wasn't in the office at the time so had to phone , where she explained what happened that morning and how I was very angry and demanding with regards to ; pay and that he wanted money paid by the end of the day and had spoken to in a very unacceptable manner. stated that this was the conversation , shared with as had done with , and discussed the way forward where they were all in agreement that they should terminate

The Tribunal again asked to confirm whether , had determined that the relationship could not continue to which responded yes, the "unacceptable manner in which spoke to , the fact that hung up the phone, the fact that I asked to come into the office and , put the phone down and left me literally hanging."

The Tribunal asked whether anyone neutral investigated the issue, since ! was a part of the conflict, and signature was appearing on the termination letter rather than that of . Counsel raised objection to this line of questioning from the Tribunal to which the Tribunal asked to elaborate more on the conversation that transpired. responded that the called started with , expressing annoyance that had not been paid. I explained that had been told that had been paid twice in error a week or so ago and was given some paperwork to check ; bank account and get back to us."

The Tribunal asked to confirm whether this was when was on leave to which confirmed that this took place after came back from leave when was able to reconcile the bank account and discovered that there was a double payment made. stated that this information was given to the Complainant on the day returned from quarantine by , stating that was double paid in error and to check bank account as soon as possible.

to moving forward. I [redacted] stated that when [redacted] gave [redacted] the content of the conversation that [redacted] Yvette) was in "full agreement" with regard to the termination.

The Tribunal asked [redacted] to confirm whether the incident occurred with [redacted] and whether [redacted] was also a part of the termination procedure to which [redacted] responded yes.

The Tribunal asked [redacted] whether there was any other consideration, other than automatic termination in light of the mistakes made with wage payments and breakdown in communications during quarantine. [redacted] stated that it wasn't an accusation but rather a very "fiery, angry, demanding" phone conversation that left [redacted] feeling threatened. [redacted] went on to state that the character of [redacted] over the [redacted] that [redacted] knew was very "moody and non-communicative". [redacted] stated that [redacted] during the course of [redacted] created a "horrible atmosphere" in the office with some behaviors bordering on insubordination. Upon questioning whether any of this had been documented [redacted] responded that it had not. [redacted] stated that knowing [redacted] character [redacted] felt the only action to take place would be termination because [redacted] "felt the relationship was so broken down that moving forward would not be in the interest of [redacted]".

The Tribunal asked [redacted] whether [redacted] was referring to the working relationship between [redacted] and the Complainant, or the working relationship between [redacted] as the employer, and the Complainant to which [redacted] responded that [redacted] was "taking the position on behalf of the entire company knowing the character of [redacted]".

The Tribunal asked [redacted] whether [redacted] had the power, within [redacted] position, to make such decisions on behalf of the company when conflicts arise without the intervention of HR, to which [redacted] stated having worked at [redacted] for over 20 years "this wasn't just a sole decision" [redacted] had discussed it with [redacted] and it wasn't a sole decision by [redacted], rather it was a decision because the relationship had broken down.

When asked about her previous evidence, [redacted] stated that she could no longer work with the Complainant, [redacted] retracted this statement, stating that [redacted] didn't word her statement correctly and that [redacted] conferred with [redacted] and [redacted] when there were situations where [redacted] needed to be involved.

The Tribunal asked [redacted] when [redacted] recalled having HR intervene in the situation to which [redacted] stated that [redacted] wasn't in the office at the time so [redacted] had to phone [redacted], where she explained what happened that morning and how [redacted] was very angry and demanding with regards to [redacted] pay and that he wanted [redacted] money paid by the end of the day and had spoken to [redacted] in a very unacceptable manner. [redacted] stated that this was the conversation [redacted] shared with [redacted] as [redacted] had done with [redacted], and discussed the way forward where they were all in agreement that they should terminate [redacted].

The Tribunal again asked [redacted] to confirm whether [redacted] had determined that the relationship could not continue to which [redacted] responded yes, the "unacceptable manner in which [redacted] spoke to [redacted], the fact that [redacted] hung up the phone, the fact that I asked [redacted] to come into the office and [redacted] put the phone down and left me literally hanging."

The Tribunal asked whether anyone neutral investigated the issue, since [redacted] was a part of the conflict, and [redacted] signature was appearing on the termination letter rather than that of [redacted]. Counsel raised objection to this line of questioning from the Tribunal to which the Tribunal asked [redacted] to elaborate more on the conversation that transpired. [redacted] responded that the call started with [redacted] expressing annoyance that [redacted] had not been paid. I explained that [redacted] had been told that [redacted] had been paid twice in error a week or so ago and [redacted] was given some paperwork to check [redacted] bank account and get back to us."

The Tribunal asked [redacted] to confirm whether this was when [redacted] was on leave to which [redacted] confirmed that this took place after [redacted] came back from leave when [redacted] was able to reconcile the bank account and discovered that there was a double payment made. [redacted] stated that this information was given to the Complainant on the day [redacted] returned from quarantine by [redacted], stating that [redacted] was double paid in error and to check [redacted] bank account as soon as possible.

The Tribunal asked [redacted] to confirm what threatening remarks the Complainant had made to [redacted] during the telephone conversation of 29<sup>th</sup> October, 2021, to which [redacted] responded *was extremely loud, said had to be paid by the end of the day, and the manner spoke it was deemed to me as a threat.*"

The Tribunal asked whether [redacted] was under the assumption that based on the Complainant's loud tone was an actual threat to which [redacted] responded *"when said that and I did feel threatened and [redacted] became very loud and rude I responded to say come in the office and we will sit down and talk about this in an equitable manner, I said that twice and [redacted] put the phone down."*

The Tribunal asked [redacted] if from the Complainant hanging up the phone on [redacted] determined that could no longer work with [redacted] moving forward to which [redacted] stated that *"insubordination to a senior manager and to be spoken to in that manner was not acceptable."*

The Tribunal asked [redacted] to confirm whether [redacted] considered this gross misconduct to which [redacted] stated [redacted] did.

### Respondent's Witness

It is the evidence of [redacted] that [redacted] is the [redacted] with the overall final decision making authority however [redacted] travels extensively and has people in management positions that know their jobs and are able to do things in his absence.

[redacted] informed the Tribunal of the legacy of [redacted] employing Caymanians over the [redacted] of business where the company has grown, providing training to many Caymanians over the years.

[redacted] confirmed that [redacted] recollection is that [redacted] first hired the Complainant right out of high school in around 1999 after which the Complainant left the company of [redacted] own volition and was eventually invited to return to the company after which the Complainant remained with the company until [redacted] termination in 2021.

[redacted] stated that early in the morning [redacted] came to see [redacted] and [redacted] was visibly shaken, extremely upset and relayed to [redacted] a conversation that had taken minutes before when [redacted] called [redacted] while [redacted] was parking in the car park in connection to monies [redacted] claimed was owed to [redacted] stated that during the conversation [redacted] *"evidently got very abusive and aggressive"* and stated [redacted] wanted to be paid now or else and that kind of conversation could not be tolerated.

[redacted] in verbal evidence stated that [redacted] management staff are [redacted] and that people felt they could verbalize and abuse them and they get very upset and shaken when it happens so [redacted] said they would discuss when [redacted] gets in and that is basically what happened.

[redacted] in verbal evidence stated that [redacted] was extremely upset seeing [redacted] upset and cannot accept conversations such as this as it breaks trust in the employee. [redacted] stated that they discussed it and things had gone too far and that if they let it go with a warning it would happen again because all trust had broken down.

[redacted] confirmed having signed the termination letter.

[redacted] confirmed that it was [redacted] ultimate decision to terminate the Complainant.

[redacted] in verbal evidence stated that [redacted] had given [redacted] two bank transactions and explained to [redacted] it was about the double payment of salary and they were trying to get a refund and explanation and [redacted] basically got annoyed and muttered words along the lines of if [redacted] could have found a better job would have been gone long ago.

The Tribunal enquired of [redacted] whether [redacted] knew why the opportunity for payment plan repayment wasn't extended to the Complainant as appears to have been extended to others to which [redacted] stated [redacted] had no knowledge as [redacted] does not get involved in the payment of salaries. [redacted] stated that [redacted] was aware there had been other overpayment occurrences in the past but was unaware of repayment arrangements.