



Department of Labour & Pensions
Cayman Islands Government
2nd Floor, Mid Town Plaza, Elgin Avenue
P.O. Box 2182 George Town
George Town, Grand Cayman KY1-1105

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Direct Ext: (345) 244-4015 Direct Email: lara.connor@gov.ky
Labour Tribunal General Email: labourtribunaldlp@gov.ky
Main Phone Contact #: (345) 945-8960
Confidential Hotline Contact #: (345) 945-3073 Fax: (345) 945-8961
Department's General Email: dlp@gov.ky
Freedom of Information Email: FOI.DLP@gov.ky
Website: www.dlp.gov.ky
Facebook: www.facebook.com/cidepartmentlabourpensions

Labour Tribunal

Monday, 01 February 2021

Via Email

Via Email

Ref: 201125 –

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of 7th December, 2020, in the matter of _____, is provided in accordance with section 75 of the Labour Act (2011 Revision).

Decision

The Tribunal finds that on the basis that _____ had already been terminated once before for fighting with another employee, that the Respondent's decision to terminate _____ employment again on 11th September 2019 after outburst which included foul and offensive language and threatening behaviour, was well within the band of reasonableness.

Orders/Awards

_____ claim for severance pay is dismissed.

_____ claim for unfair dismissal is similarly dismissed.

Right to Appeal

Any person aggrieved by this Tribunal Decision, by virtue of the Labour Act (2011 Revision), 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 Government Administration Building, Box 108
133 Elgin Avenue, George Town
Grand Cayman KY1-9000
Cayman Islands
Tel: (345) 244 3226 Fax: (345) 949-9343
Email: Lat@gov.ky



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Cayman Islands Government
2nd Floor, Mid Town Plaza, Elgin Avenue
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Direct Ext: (345) 244-4015 Direct Email: kara.connor@gov.ky
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Alternative Email: labourtribunal@dlp.ky

Please be guided accordingly.

Faithfully,

Kara Connor
Labour Tribunal Secretary





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Email: kara.connor@gov.ky Email: labourtibunal@go.ky

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

Proceedings

Matter:

Date of Hearing: 7 December 2020

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: Jennodell Myles

Labour Tribunal Secretary: Kara Connor

Employee/Complainant: (not in attendance)

Employer/Respondent: On behalf of

Observers: NIL

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 "the Respondent"). The Complaint was heard by the Tribunal on the 7th December 2020, commencing at 9:30am via the virtual video conference platform Zoom.
2. The Complaint was filed in this matter by the Complainant on 2nd October 2019 and the Tribunal has reviewed and carefully considered the Complaint and reviewed and carefully considered the written submissions of the Complainant and the oral and 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. _____ did not attend the hearing however, the Tribunal was satisfied that all parties were duly notified of the hearing and decided to proceed to hear the matter under the provisions of the Labour Law (2011 Revision).
4. _____ was employed by the Respondent in the capacity of an Apprentice from 3rd January 2018. _____ earned _____ and worked _____ per week. _____ last day of employment was on the 11th September 2019.
5. _____ had worked for the Respondent previously on or about 2013, but that period of employment came to an end when _____ was terminated for fighting with another employee.
6. On 11th September 2019, _____ was working on a project at the _____ house. The task reportedly involved painting a waterproofing agent on the _____ balcony. _____ testified that when _____ went to check on _____ progress found that _____ had made a complete mess of the work. _____ explained that non-removable adhesive was splatted all over the white exterior walls which would cost thousands of dollars to be repaid.
7. The Respondent claims that when confronted about the substandard work _____ became belligerent, verbally offensive and engaged in threatening and intimidating behavior.
8. The Respondent claims to have explained to _____ that this was not the first time they had performance and attitude issues with the Complainant but it was the final straw and that _____ employment was terminated.
9. The Respondent relies on section 52(1)(a) as the basis for the termination

The Law

10. The Labour Law (2011 Revision) provides:

- (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 ... held without contravention (on ... 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 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 ... 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.

"It is well established that in a case of suspected misconduct the test of fairness is not whether the employer has provided 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"

(See Halsbury Laws of England, paragraph 651)

If this test is met, the Tribunal need only consider further whether the Employer acted reasonably in the circumstances.

"The key consideration for an employment tribunal is, therefore, the reasonableness or otherwise of the employer's conduct, not the injustice to the employee. In adjudicating on the reasonableness of the employer's conduct, an employment tribunal must not simply substitute its own views for those of the employer and decide 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."

(See Halsbury Laws of England, paragraph 642)

The Tribunal's Findings

Decision

outburst which included foul and offensive language and threatening behaviour, was well within the band of reasonableness.

Orders/Awards

12. claim for severance pay is dismissed.
13. claim for unfair dismissal is similarly dismissed.

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 20 day of January, 2021



Date
15/11/24