



Department of Labour & Pensions
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 Facebook: www.facebook.com/ciddepartmentlabourpensions

Labour Tribunal

Thursday, 04 February 2021

Via Email: [REDACTED]

Via Email: [REDACTED]

Ref: 203655 – [REDACTED]

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of 4 February 2021, in the matter of [REDACTED], is provided in accordance with section 75 of the Labour Act (2011 Revision).

Decision

The Tribunal notes that [REDACTED] is primarily concerned with clearing [REDACTED] name. To that extent, the Tribunal accepts that [REDACTED] may not have intentionally breached [REDACTED] confidentiality obligations to the Respondent. However, the Tribunal is of the view that [REDACTED] may not have a full appreciation for the purpose and objectives of the confidentiality obligations and what it seeks to achieve.

The Tribunal accepts that [REDACTED] had no prior knowledge of the reasons why [REDACTED] was being terminated before [REDACTED] meeting with [REDACTED] 2nd September 2019. The Tribunal strongly discourages this sort of practice and recommends that the Respondent familiarize themselves with best practices in employment separation scenarios. That said, in this instance, the Tribunal is of the view that it is unlikely the outcome would have been different even if a proper procedure was followed.

Orders/Awards

[REDACTED] claim for severance pay is denied.

[REDACTED] claim for unfair dismissal similarly fails.

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



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Please be guided accordingly.

Faithfully,

Kara Connor
Labour Tribunal Secretary





DEPARTMENT OF LABOUR & PENSIONS

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LABOUR TRIBUNAL <i>Extraordinary Gazette No. 43/2019</i>		
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 <i>(Resigned)</i>	Ian Charlerly
Kathryn Rowe	Noel Webb	Brando Rankin
		Edward Solomon

Proceedings

Matter: [REDACTED]

Date of Hearing: 3 February 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: [REDACTED]

Employer/Respondent: [REDACTED]

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 [REDACTED] ("the Complainant" or "[REDACTED]") against [REDACTED] former employer, [REDACTED], [REDACTED], "the Employer" or "the Respondent"). The Complaint was heard by the Tribunal on the 24th November 2020, 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 oral and 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. [REDACTED] was employed by the Respondent from 1st May 2019 through 2nd September 2019.
4. At the time [REDACTED] employment came to an end, [REDACTED] was working in the capacity of a [REDACTED], earning CI \$ [REDACTED] per month and working a standard [REDACTED] work week.
5. On 2nd September 2019, [REDACTED] was invited to a meeting with [REDACTED] where [REDACTED] was handed a letter and asked to read it. The letter addressed to [REDACTED] dated 2nd September 2019 states as follows:

" Re: Employment Termination

Dear [REDACTED]

This letter serves as official notification of termination of employment at [REDACTED] with immediate effect. Your Temporary Work Permit will be terminated immediately.

We discussed the following issue:

- *It has been found that on the 23rd July, 2019, [REDACTED] shared [REDACTED] confidential pricing tool to another [REDACTED]. This pricing tool is provided to [REDACTED] from Line [REDACTED]. This pricing tool is issued to [REDACTED] solely, as part of their exclusive Cayman Islands Franchise Agreement with [REDACTED]. As part of the onboarding documents signed by [REDACTED] was a [REDACTED] Confidentiality agreement (doc. P-D-118_Confidentiality Agreement)...".*

6. [REDACTED] said that this issue was not brought to his attention by anyone at [REDACTED] prior to the meeting with [REDACTED] on 2nd September wherein [REDACTED] was terminated. This was not disputed.
7. The Complainant does not deny sending the email message with the attached pricing tool to [REDACTED] father. [REDACTED] counters that [REDACTED] was not aware that it was a [REDACTED] but rather a spreadsheet that was created inhouse. According to the Complainant the words [REDACTED] did not appear on the documents that [REDACTED] sent. [REDACTED] suggested that it might be a formatting issue that prevented the words [REDACTED] from appearing. Further that another employee had previously sent

8. The Respondent accepts that another employee sent the pricing tool to a customer previously and was not terminated but says that, that employee sent the pricing tool accidentally and further that the information contained in the tool at that time was relevant to the employee.
9. █████ explained that the email exchange between █████ and █████ was uncovered at the end of August after █████ started monitoring █████ emails, with the hopes of discovering some other performance related issues that were brought to █████ attention, including unexplained absences, low productivity etc.
10. The Complainant maintains that █████ did not know the document was a █████ document or that █████ was sharing confidential information with █████, even though █████ accepts that even if the spreadsheet was developed in house it would have been covered by the confidentiality clause.
11. The Respondent maintains that █████ actions exposed the Company to significant risks of reputational and other harm and that it rose to the level of serious misconduct. It was the Respondent's position that the trust which is the central component in an employment relationship was now irretrievably broken.

The Law

12. 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 █████ 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 █████ 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 █████ employment.*

"It is well established that in a case of suspected misconduct the test of fairness is not whether the employer has provide 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 he genuinely did believe the employee guilty of the misconduct.*

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 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."

(See Halsbury Laws of England, paragraph 642)

The Tribunal's Findings

Decision

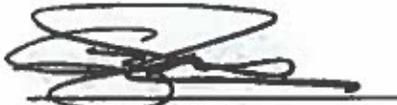
13. The Tribunal notes that [REDACTED] is primarily concerned with clearing [REDACTED] name. To that extent, the Tribunal accepts that [REDACTED] may not have intentionally breached [REDACTED] confidentiality obligations to the Respondent. However, the Tribunal is of the view that [REDACTED] may not have a full appreciation for the purpose and objectives of the confidentiality obligations and what it seeks to achieve.
14. The Tribunal accepts that [REDACTED] had no prior knowledge of the reasons why [REDACTED] was being terminated before [REDACTED] meeting with [REDACTED] on 2nd September 2019. The Tribunal strongly discourages this sort of practice and recommends that the Respondent familiarize themselves with best practices in employment separation scenarios. That said, in this instance, the Tribunal is of the view that it is unlikely the outcome would have been different even if a proper procedure was followed.

Orders/Awards

15. [REDACTED] claim for severance pay is denied.
16. [REDACTED] claim for unfair dismissal similarly fails.

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 3 day of February, 2021

