



**LABOUR  
APPEALS  
TRIBUNAL**  
CAYMAN ISLANDS GOVERNMENT

**Department of Labour & Pensions**  
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Monday, July 12 2021

Appellant:

Respondent:

Via email:

Via email:

**RULING**

**Case Title:** Appeal of I (decision dated 1 February 2021)

**LAT Case & Case #:** 216537 -

**Date of Hearing:** 9 July 2021 (1.30p.m – 3.00p.m.)  
Proceedings conducted by ZOOM video conference which no party indicated an objection to.

**Present:** Phillip Ebanks, Chairman  
Raquel Solomon, Member  
Joe Jackson, Member  
Patrianna Ebanks, Secretary

**For Appellant:** Mr. Locksley Haylock (for the Appellant, ), via ZOOM

**For Employer:** in person, via ZOOM

**Witnesses:** Neither party called any witnesses.

**Background**

**1. Decision of the Labour Tribunal:**

Following hearing of the matter on 8 February 2021, the Labour Tribunal ("Tribunal"), in its decision dated 9 February 2021 (Tribunal's Decision"), held that:

*"In the absence of evidence to the contrary, the Tribunal does not accept that the was completely random.*

*There were no other witnesses to the conversation wherein allegedly admitted to recent marijuana use. The Complainant denies that made such an admission. The Tribunal is of the view that a prudent employer would have at a minimum made a contemporaneous file note or preferably had an employee sign a statement confirming their refusal to undergo testing.*

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The tribunal is inclined to believe that the requirement to \_\_\_\_\_ with the Respondent's hopes of finding grounds to terminate \_\_\_\_\_ employment.

The Tribunal notes and empathizes with \_\_\_\_\_ who said at the outset of the hearing that \_\_\_\_\_ was just returning from a \_\_\_\_\_ and understands that \_\_\_\_\_ may not have been fully prepared. However, the lack of evidence is detrimental to the respondent's case.

\_\_\_\_\_ claim for severance pay succeeds... is entitled to CI\$ \_\_\_\_\_ tenure).

\_\_\_\_\_ claim for unfair dismissal similarly succeeds. The Tribunal awards the maximum amount of CI\$ \_\_\_\_\_ standard hours \_\_\_\_\_

**Decision of the LAT:**

2. LAT Considered the following:

- (i). Decision of Labour Tribunal of 9 February 2021
- (ii). Bundle documents.
- (iii). Submissions/ Grounds of Appeal set out by Locksley Haylock dated 22 February 2021.
- (iv). Letter of \_\_\_\_\_ dated 17 July 2019.
- (v). Letter of \_\_\_\_\_ dated 10 October 2019.
- (v). Transcript of hearing before Labour Tribunal, dated 24 March 2021.
- (v). Oral submissions on behalf of the Appellant and \_\_\_\_\_

3. The LAT considered the documents set out herein and submissions made before it by the Appellant and Employer.

**The Law**

4. The Labour Act (2021 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 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 of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held, and under the circumstances the employer acted reasonably.*

*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 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 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 employees guilt. This involves a threefold test:*

- 1) The employer must establish that genuinely did believe the employee guilty of the misconduct;*
- 2) That that belief has 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 decided whether it would have dismissed on these 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 employee 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)*



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5. The LAT finds, as to the ground that:

"The decision [of the Labour Tribunal] was (a) erroneous in law and (b) unreasonable.

- (i) The findings made by the Tribunal (paragraph 20 -23) are reasonable.
- (ii) There was no evidence that [redacted] presented as und [redacted] from [redacted] actions or demeanor (as suggested by the Appeal [redacted] at paragraph 4, commencing "we are of..." of [redacted] Grounds of Appeal.). In absence of independent evidence, the Tribunal") was entitled to make findings as outlined at paragraph 21 concerning the alleged admission. The LT was entitled to conclude that "does not accept that the [redacted] was completely random" on the evidence presented.
- (iii) The LAT does not find that the decision of the Tribunal") was erroneous in law.
- (iv) The LAT does not find that Tribunal's findings of fact were so unreasonable that no reasonable Tribunal could reached the same conclusion.
- (v) The LAT does not find any irregularity that would warrant the decision of the Tribunal being unjust.
- (vi) Accordingly, the Appeal must fail.

6. The LAT upholds the decision of the Labour Tribunal dated 9 February 2021 and finds that [redacted] was unfairly dismissed by the Employer. Accordingly, the Appeals Tribunal confirms the award of KY\$ [redacted] (severance pay) and KY\$ [redacted] (unfair dismissal).

Dated 12 July 2021

H. Phillip Ebanks, Chairman LAT