



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

Thursday, 06 October 2022

Via Email

Via Email

Ref:

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of 5 March, 2021 5 July 2022, in the matter of _____, is provided in accordance with section 75 of the Labour Act.

Decision

In absence of evidence to the contrary, the Tribunal is not satisfied that the Complainant was tested completely at random.

The Tribunal is of the view that a prudent employer, having received positive drug test results from an employee, would have effected the termination immediately rather than waiting an additional 2 weeks, had this been done the accident of 27th June, 2019, would have been avoided.

Based on the above, the Respondent's case fails.

Orders/Awards

Severance: 1 week for each completed year of service equating to \$ _____ per week for 2 weeks being \$ _____

Unfair Dismissal Compensation: 1 week for each completed year of service equating to \$ _____ per week for 2 weeks being \$ _____

TOTAL: \$ _____

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.



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

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 _____).
2. The Tribunal has reviewed and carefully considered the Complaint, known as Form 18, the written and oral representations made by _____ on behalf of the Complainant, the written and oral representations made by _____ on behalf of The Respondent, together with any other documentation as may be referred to in this Decision.
3. In reaching this Decision, the Tribunal has also carefully considered relevant sections of the Labour Act (Revised).

Observations and Evidence

_____ filed a labour complaint on or around 8 August, 2019. The Tribunal has reviewed this complaint in detail.

_____ was employed by the Respondent from 9th December, 2017, through 27th June, 2019.

At the time that _____ employment came to an end _____ was employed in the position of _____ as evidenced in _____ employment contract under the heading Job Title, Duties and Responsibilities.

At the time of termination _____ was earning \$ _____ per hour (including gratuity), and working a standard _____ according to testimony and documented evidence.

The Complainant did not have any active warnings on file at the time of termination.

On 27th June, 2019, the Respondent seemingly terminated the Complainant's employment, this is attested to in the Respondent's response to the Department of Labour & Pensions by way of letter dated 4th September, 2019, having been furnished to the Department of Labour & Pensions on 6th September, 2019.

In accordance with Section 51(1)(f) a dismissal shall not be unfair if the reason assigned by the employer for it is some other substantial reason of a kind, which would entitle a reasonable employer to dismiss an employee holding the position which the employee held. As well, Section 52(1)(d) states that where an employee 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. Consequently, the 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



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

but rather some form of retaliation/set-up to find reasons to demonstrate the complainant being at fault for the 4th June, 2019 incident. The Tribunal is unable to decipher the nature of this incident.

The Complainant testified to never having received the termination letter until some 2 years, 9 months and 16 days after the fact.

When questioned about the company's drug testing policy [redacted] stated that over the years the Respondent had consistently given employment opportunities to individuals with a documented history of [redacted], this was in hopes of providing persons, primarily young Caymanians, with the opportunity for employment and [redacted] however it had often been the case that employees would [redacted] which led to the Respondent implementing a [redacted]

When asked if the Respondent could show evidence of the policy, and when the company had taken the decision to implement the policy, [redacted] : advised the Tribunal that those decisions and discussions were made during conference calls with head office, he did retain some notes but these were not readily available.

The Tribunal notes that [redacted] refers to said policy in [redacted] letter to the Department of Labour & Pensions, however the policy did not form a part of the disclosure documents received from the Department and it leads the Tribunal to question when [redacted] inadvertently neglected to furnish the policy or if a written policy in fact even existed at the time of the Complainant's termination. The Tribunal also notes that a copy of the termination letter was also not contained in the disclosure documents received from the Department.

[redacted] informed the Tribunal that there were several other individuals selected for [redacted] around the same time, or within days of the Complainant's test, suggesting that the Complainant was not targeted.

The Law

The Labour Law provides:

Section 40

Every employee whose term of continuous employment with an employer and any predecessor-employer has in aggregate exceeded one year is entitled to receive, in addition to any other payments which may be due to that employee, upon termination of his employment by his employer for any reason, other than a dismissal which is within paragraph (a), (b) or (c) of section 51(1), severance pay, being payment in money calculated in accordance with this Part.

Section 51



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

weeks, had this been done the accident of 27th June, 2019, would have been avoided.

Based on the above, the Respondent's case fails.

The Tribunal does not accept the Respondent's reasoning for of the being busy contributing to the delay in effecting the termination of the Complainant and it is on this basis that claim for severance pay succeeds, similarly claim of unfair dismissal succeeds.

The Tribunal accepts the Complainant's testimony that he did not receive the termination letter until disclosed to by the Labour Tribunal Secretary in April, 2022.

This leaves the Tribunal with a question of the true length of the Complainant's employment, the Tribunal is guided by the Grand Court matter of however the full judgement was not provided, therefore the Tribunal must rely on the facts before it when making this Order:

Order

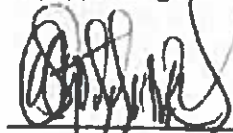
Severance: 1 week for each completed year of service equating to being \$

Unfair Dismissal Compensation: :h completed year of service equating to week for 2 weeks being \$

TOTAL: :

Appeals

Any appeals against this judgement should be directed to the Labour Appeals Tribunal within 14 days.


Donnette Goddard
Chairperson

