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

Direct Ext: (345) 244-4015 **Direct Email:** kara.connor@gov.ky
Labour Tribunal General Email: labourtribunaldlp@gov.ky
Main Phone Contact #: (345) 945-8960
Confidential Hotline Contact #: (345) 945-3073
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
Extraordinary Gazette No. 15/2022

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James Kennedy	Angelita Edwards	Petrina Moore
Jennodell Myles	Vincent Frederick	Jaron Leslie
Samantha Bennett	Michelle Coleman	Denise Farrington
Keith Myers	Nadine McBean	Pamela Duncan
	Cashema Clarke	Nanalie Cover
		Harwell A. McCoy Jr.
		Davina Ebanks
		Vaccianna Franklin
		Shelly-Ann Davis

Decision

Matter:
Date of Hearing: 17 October 2023
Location: Remote hearing via Zoom

Attendees

The Tribunal
James Kennedy, Chairperson
Jaron Leslie, Deputy
Click here to enter text.

For the Complainant
In person
Click here to enter text.

For the Respondent
Not in attendance

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Observers
None

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 "

2. The Complaint was heard by the virtual video conference Zoom, on 17 October 2023, commencing at 10.30 a.m.

3. The Tribunal has reviewed and carefully considered the Complaint; the written representations made by the Employer together with the other documentation referred to in this Decision.

4. On the date of the hearing, no representative of the was in attendance and contact was made with a representative. They indicated that they did not intend to attend the hearing and continued to rely solely on the written representations previously made and the correspondence in the matter. Specifically, they wished to rely upon their letter dated 10th July 2023 to the Tribunal.

5. The Tribunal notes its obligations with respect to procedure under s75(6) of the Labour Act is, if a party fails to attend, is to proceed to consider the case on the basis of the complaint, the hearing and any written representations made by the party failing to attend.

Background

1. was employed by the . . . . . This gave service and per month or

2. initial contract stated role as being of for the job description included under section titled included that the post requires a teacher trained and qualified in Education to degree level preferably in

3. By letter dated 18th March 2021 the Employer wrote to stating as follows:

   Dear
   In accordance with the terms of your Agreement for Employment with the (the "Contract") we hereby inform you we will be terminating the Contract and your employment with in one month from today's date, being 19 April 2021 (the "Termination Date").

4. This letter also indicated that would be paid salary and other benefits to the date of termination and an amount that reflects payment for severance i.e., one week's salary for every full year worked.

5. After the termination of employment on 19th April 2021, instructed an attorney to make claims on behalf and filed a claim for unfair dismissal.

6. As a result of a request for written reasons for termination from the Attorney of wrote by letter dated 31 March 2021 setting out those reasons. This letter set out 2 reasons for the termination (1) resignation (2) failure to meet the job description and agreed education qualification level for the post.

The Tribunal Observations

7. There are 2 issues to deal with – did resign and therefore there was no dismissal and in the alternative, if she was terminated by her employer, was it for good cause in accordance with section 51 of the Labour Act?

Resignation issue

8. This is an utterly hopeless point taken by the Firstly, as a matter of fact, we do not accept that reigned at the meeting of 17 January. , unlike the attended the Tribunal hearing and gave evidence. evidence was that at that meeting told the employer that couldn't finish the degree due to workload and that was aware of a feeling that the employer had been trying to push out for years, and stated words to the effect of "let me know where we go from here" and that had an inkling that they were going to dismiss anyway. further stated that after this meeting, the employer tried to force a narrative that had resigned and that this ended with termination after the letter of 18 March.

9. By email dated 18 January 2021 after that meeting, of the wrote to stating, *"Do you have time tomorrow or Wednesday so that we can finalise the timing of your resignation as discussed last Tuesday?"*

10. responded on the same day in response *"In order for me to leave (as I feel I am being pushed to do), I have a specific plan in place for what finances etc. I need in order to do so. Unfortunately, after our conversation the other day, I will not be able to give you a date yet. I will need to see how finances work out for me, and I will update you when I am able to give you a solid answer."*

11. responded 20 January *"You were not and are not being "pushed" to vacate your role. This discussion was initiated by you stating that you had plans beyond that you did not wish to achieve the degree level education which has been consistently stated to you as a requirement for your role and, given your position on this, that you felt it would be best if we agreed a date for your resignation or vacation of the role."*

12. This exchange ended on 26th January 2021 when stated (about the conversation at the meeting) *"When I said that "when I leave this job I will be going a completely different direction," it didn't mean that I was ready to leave yet or was resigning, it meant that I wasn't going to pursue higher education for early childhood any longer. I spoke with you all about time frames in the next conversation because I thought that is what you expected based on the aspect."*

13. We find as a matter of fact that no resignation occurred, there is nothing in the emails that could lead the Tribunal to conclude that there was a clear and unambiguous resignation. The emails after the meeting in fact suggest otherwise as they show clearly that no date for the end of employment was set, and email of 20 January indicated that the employee was to resign or vacate the role. The emails are consistent with an ambiguous discussion relating to a possible future scenario whereby does finish employment but nothing more.

14. Even if any doubt existed that clearly resigned based on the emails and correspondence, we resolve that doubt in favour of and accept her oral evidence to the Tribunal. The decided not to attend the Tribunal and as such evidence was uncontested and we found a compelling and truthful witness.

15. Furthermore, the actually terminated in writing by letter dated 18th of March (*"we hereby inform you we will be terminating the Contract"*). If had resigned, there would be no need for a termination by the employer. Their defence of the claim on this ground simply makes no sense and by that letter they conceded that they terminated the employment and as such their argument that resigned was bound to fail.

Failure to meet educational requirements.

16. This argument is equally hopeless. employed in role in the knowledge that did not hold a degree level qualification. carried out role on a full basis and not on any restricted duties on that basis for over years. There was no evidence of a deadline being set for this degree to be obtained or evidence of how lack of Degree was impacting performance or the operations.

17. stated that inability to complete the degree was due to a number of factors but principally due to workload which in part was increased by the lack of a the organisation.

18. The only thing that changed in January 2021 was stating that would no longer work towards a Degree meeting the job description. Without the benefit of submissions from the employer, it is hard to understand the basis of the belief that this position was such a serious breach of contract that the employer was left with no option but to summarily dismiss. The failure to progress the degree cannot be described as misconduct nor poor performance, nor can it be a matter triggering section 51(1)(e) of the Labour Act and nor is it a substantial reason of a kind entitling a reasonable employer to dismiss.

19. Furthermore, the employer failed entirely to conduct any sort of disciplinary process which makes the dismissal procedurally unfair. If the employer believed this conduct was such that they were contemplating termination, it was incumbent on them to provide an opportunity for to remedy the issue prior to terminating summarily after of unblemished service.

Decision

20. The tribunal unanimously finds that was unfairly dismissed for the reasons set out above.

21. was out of work for a number of months post termination and the ill-tempered correspondence from the , their refusal to concede this hopeless claim resulting in being kept out of compensation for over 2 years and then wasting everyone's time but their own in forcing a hearing at which they didn't attend, lead us to award the maximum sum of CI$8,400 as compensation.

Appeals

The Tribunal's decision, enforcement and appeals are governed by section 75 to 78 of the Labour Law. Any person 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.

James Kennedy

James Kennedy, Chairperson
Signed this 15th day of November 2023