



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

27 June 2024

Via Email

Via Email

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of **12 June, 2024**, in the matter of is provided in accordance with section 75 of the Labour Act.

Decision

1. In this case we find that the Employer met its obligations to dismiss fairly. On the day in question, the employer carried out sufficient inquiries into the alleged misconduct, including speaking to two witnesses, and sending [redacted] home for the day with the view of meeting again the following day. The employer then met with [redacted] affording [redacted] the opportunity to present his version of events. The employer genuinely believed that [redacted] actions the previous day and again the following day amounted to serious misconduct, was a breach of safety procedures, would pose a safety risk to [redacted] and other employees as well as potentially jeopardize the Indigo contract, and that such belief was based on reasonable grounds after sufficient investigation and inquiries.
2. Finally, after hearing the evidence and weighing it up, alongside considering the evidence on [redacted] we can only find that the Employer's response was within the band of responses. As stated above, it matters not if the Tribunal would have come to the same decision, just that the Employer here was entitled to take the decision that they did.

Orders/Awards

The complaints of [redacted] are dismissed.

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.

Please direct appeals to:

Secretary to The Labour Appeals Tribunal
2nd Floor Mid Town Plaza
Elgin Avenue, George Town
Grand Cayman KY1-9000
Cayman Islands
Tel: (345) 945-8960

2nd Floor, Mid Town Plaza, Elgin Avenue, P.O. Box 2182 George Town
George Town, Grand Cayman KY1-1105

Direct Ext: (345) 244-4015 Direct Email: kara.connor@gov.ky, Labour Tribunal General Email: labourtribunaldjp@gov.ky



**Labour
Tribunal**

CAYMAN ISLANDS GOVERNMENT

Email: Lat@gov.ky Alternative Email: labourtribunal@dlp.ky

Please be guided accordingly.

Faithfully,

Kara Connor
Labour Tribunal Secretary



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

LABOUR TRIBUNAL		
Chairpersons	Deputy Chairpersons	Members
Jennodell Myles	Angelita Edwards	Nanalie Cover
James Kennedy	Michelle Coleman	Luisa Hernandez
Samantha Bennett (resigned)	Cashema Clarke	Gary Berry
Nick Hoffman	Nadine McBean	Anya Rankin-Christian
Keith Myers	Noel Webb	Roxane Basham
	Vincent Frederick	Ebanks
		Audrey Prendergast
		Davina Ebanks
		Vaccianna Franklin
		Shelly Ann Davis
		Pamela Duncan

PROCEEDINGS

Matter:

Date of Hearing: 12 June, 2024

Location: Virtual Hearing

Labour Tribunal Panel

Chairperson: Jennodell Myles
Deputy/Member: Angelita Edwards
Member:

Labour Tribunal Secretary: Kara Connor

Complainant: < (Not in attendance)

Respondent:

Observers:

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 "I") against his former employer, [redacted] ("the Employer"). The Complaint was heard by the Tribunal on the 12 June 2024 commencing at 10:00am via the virtual meeting platform, Zoom. The Tribunal allowed a grace period of 15 minutes to allow the Complainant an opportunity to sign in and called the hearing to order at approximately 10:20am.
2. The Complaint was filed in this matter by the Complainant on the 11th of November 2022 and the Tribunal has reviewed and carefully considered the Complaint and reviewed and carefully considered the materials filed by the parties. In reaching this decision the Tribunal has also reviewed and considered the sworn evidence of the Complainant and the witnesses called on behalf of the Employer. The Tribunal has also reviewed the relevant sections of the Cayman Islands Labour Act (2021) Revision ("the Act").

Background and Summary of Evidence

3. [redacted] was employed by [redacted] as an [redacted] with [redacted]; employment date being stated as 22 June, 2018. [redacted]'s main duties were to work with the experienced plumbers and worked [redacted] seemingly worked on a regular steady basis during the period of [redacted] employment however there appeared to be some unexcused absences from time to time. [redacted] was furnished with an employment agreement and worked a standard work week. Over the last year [redacted] earned an average of [redacted] every 2 weeks after deductions.
4. The Tribunal has evidence of [redacted] having received at least 1 written warning during the 12 months preceding his termination.
5. [redacted] was terminated by letter dated 7th March 2022. Due to the vague nature of the termination letter the Tribunal probed [redacted] as to the reasons for the termination and the intentions in [redacted] mind at the time of making the decision to terminate [redacted]

Your termination is based on an incident on the 5 September 2022 in the parking lot of the

It was reported by [redacted] personnel that you parked in the parking lot which is private property, and you were told to remove your vehicle and you refused to do so. The report states that this has happened in the past, yet you did so again on the 5 September 2022. In addition to parking on private property on this day, you threatened the individual in saying "I [redacted] is ramping with [redacted] life" and walked away leaving your car on their property. According to your statement, you did not threaten [redacted] but asked [redacted] "if I am parking inside [redacted] gate" and walked off leaving your car behind.

In our investigation regarding this incident, we found out from the property manager that [redacted] also spoke with you about parking issues a few months ago and [redacted] stated that your reply was extremely rude to [redacted] confirmed the altercation on the 5 September 2022 but did not hear the precise words used by [redacted]

you but believes them to be unpleasant based on I employee being quite upset after you left.

This is unacceptable behaviour and not tolerated by our company.

6. did not receive severance payment upon termination.
7. At the time of the termination was contracted to the which is a . In evidence stated that doesn't take issues with what employees do in their personal time whether however there is a zero tolerance policy while at work.
8. in evidence stated that left the job without informing anybody and sat in car for 2 hours, upon returning smelled heavily of and have eyes which was witnessed by the who then reported the incident to and
9. in evidence stated that did not conduct on and stated that does not put much reliance on because in view a person may whether the the same day, or a week before or a few weeks before.
10. in evidence stated that has a very strict safety protocol and no policy and had been discovered by one of I or it would have resulted in all employees having to undergo mandatory and anybody would be banned from any , the loss of the contract would also be a real possibility.
11. On the day of the incident, stated that the main reason for asking to leave the site was due to obvious which in view was a safety risk working on a on a site with a few hundred other people. in evidence stated that this was dangerous not only for but also for others therefore this incident had to be taken very seriously.
12. in evidence stated that I previous infractions and disruptive behaviours had been overlooked, however due to the seriousness of whilst at work was not in the position to simply overlook it this time as such the decision was made to send I home for the day.
13. in evidence stated that I instructed I to inform I to report back to the office the following morning for a meeting however instead of reporting back to the office the following day reported to the site at which time was sent to the office.
14. in evidence stated that upon arrival to the office asked to relay what took place the previous day. stated that comments were conflicting with the comments of I and therefore thought it best for to return to the site where would

arrange to meet with everyone the following day to hash out what occurred and figure out the way forward.

15. [redacted] in [redacted] evidence that upon turning up to the site the following day [redacted] again smelled [redacted] when [redacted] walked in. In the meeting [redacted] stated that [redacted] explained what had transpired whilst [redacted] didn't state much of anything against what [redacted] had stated but rather began to express other things not relevant to the discussion of marijuana use whilst at work the previous day.
16. [redacted] stated that this was when it was ultimately decided that the employment relationship would no longer work out at which time [redacted] discussed the termination with [redacted] and the decision to terminate was finalized. When questioned about the vagueness of the termination letter [redacted] stated that [redacted] did not want to highlight the issues in the termination letter and potentially [redacted] ; future employment opportunities and went on to confirm that the decision to terminate was based on [redacted] serious misconduct and usage of marijuana on the job site which was against company policy and a safety risk.
17. Upon preparing the termination letter [redacted] ; did not come to collect the letter therefore the letter was given to [redacted] who also works with the company.
18. [redacted] stated that subsequently [redacted] was provided with a job reference sometime later confirming the dates of [redacted] employment.

Decision

19. When terminating for serious misconduct, the first step is that the Employer must establish that the reason falls within a potentially fair reason.
20. 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 [redacted] 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 [redacted] 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."
21. If this test is met, the Tribunal need only consider further whether the Employer acted reasonably in the circumstances. In assessing the reasonableness of the decision, it is accepted law that 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.

22. In this case we find that the Employer met its obligations to dismiss fairly. On the day in question, the employer carried out sufficient inquiries into the alleged misconduct, including speaking to two witnesses and sending home for the day with the view of meeting again the following day. The employer then met with affording the opportunity to present version of events. The employer genuinely believed that actions the previous day and again the following day amounted to serious misconduct, was a breach of safety procedures, would pose a safety risk to and other employees as well as potentially jeopardize the contract, and that such belief was based on reasonable grounds after sufficient investigation and inquiries.
23. Finally, after hearing the evidence and weighing it up, alongside considering the evidence on Form 1B of , we can only find that the Employer's response was within the band of reasonable responses. As stated above, it matters not if the Tribunal would have come to the same decision, just that the Employer here was entitled to take the decision that they did.

Orders/Awards

24. The claims are dismissed.

Appeals

The Tribunal's decision, enforcement and appeals are governed by section 75 to 78 of the Labour Act. Any persons aggrieved by this Tribunal decision by virtue of section 78 of the Labour Act may, within 14 days of notification of the decision, or service of notice, appeal to the Appeals Tribunal.


Jennoell Nyles
Labour Tribunal Chairperson
27 June 2024

