



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

Department of Labour & Pensions

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: kam.cannon@gov.ky

Labour Tribunal General Email: labourtribunal@gov.ky

Labour Tribunal

Tuesday, 30 March 2021

Via Email: [REDACTED]

Via Email: [REDACTED]

Ref: [REDACTED]

The enclosed ruling of the Labour Tribunal, resulting from the proceedings of **Wednesday, 22 February 2021**, in the matter of [REDACTED], is provided in accordance with section 75 of the Labour Act.

Decision

Whilst an employee is under implied and here express terms to act in good faith and with fidelity to their employer, the circumstances here are that [REDACTED] had fulfilled that obligation by handing [REDACTED] notice in to the employer in June. Upon being asked to stay on past [REDACTED] notice, [REDACTED] cannot then be criticised for continuing to organise [REDACTED] next career move and it appears the actions of [REDACTED] were a particularly unpleasant manipulation of the situation to extract benefit from [REDACTED] and then scupper [REDACTED] future plans at a time that best suited [REDACTED]

Orders/Awards

The unanimous decision of the Tribunal is that the Complainant was unfairly dismissed and is due compensation as follows;

- Severance of [REDACTED]
- Unfair dismissal compensation [REDACTED]; [REDACTED]

Total award is \$[REDACTED]

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.



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Labour Tribunal General Email: labourtribunal@cip.gov.ky

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 Mid Town Plaza

Elgin Avenue, George Town

Grand Cayman KY1-9000

Cayman Islands

Tel: (345) 945-8960

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

Please be guided accordingly.

Faithfully,

Kara Connor

Labour Tribunal Secretary





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Website: www.dlo.gov.ky
Facebook: www.facebook.com/cidepartmentoflabourpensions

LABOUR TRIBUNAL <i>Extraordinary Gazette No. 45/2019</i>		
Chairpersons	Deputy Chairpersons	Members
Gregery Barnes	Ryan Charles	Caroline Barton
James Kennedy	Angelita Edwards	Melaynee Bodden
Jennodell Myles	Brando Rankine	Martha Bush
Kathryn Rowe	Stephanie Suckoo (<i>Resigned</i>)	Ian Charlery
	Noel Webb	Ludivene Dilbert
		Edward Solomon

Decision

Matter:

Date of Hearing:

Location:

Attendees

[REDACTED]

22 February 2021

Main Conference Room, Department of Labour & Pensions

The Tribunal
James Kennedy, Chairperson
Ian Charlery, Member
Angelita Edwards, Deputy

For the Complainant

[REDACTED]

[Click here to enter text](#)

For the Respondent

Absent [Click here to enter text](#)

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 [REDACTED] ("the Complainant" or [REDACTED]) against his former employer, [REDACTED] ("the Employer" or [REDACTED]).
2. The Complaint was heard by virtual meeting via Zoom, on 22 February 2021, commencing at 10 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. The Tribunal has also reviewed the relevant sections of the Cayman Island Labour Act (2011 Revision) ("the Labour Act") and in reaching this Decision, the Tribunal has also carefully considered the evidence, and oral testimony of the Complainant.

Background

1. [REDACTED] was employed by [REDACTED] as a [REDACTED] from [REDACTED] and was terminated on [REDACTED]. [REDACTED] was paid \$[REDACTED] per month and was paid monthly. This gives a weekly wage of \$[REDACTED] and full completed years of service of 5.
2. [REDACTED] stated in [REDACTED] complaint that in mid-2019 [REDACTED] informed [REDACTED] that [REDACTED] was resigning to take up a role elsewhere. [REDACTED] was asked to remain with the employer beyond [REDACTED] notice period to assist them with the opening of a new office location at [REDACTED] and [REDACTED] agreed [REDACTED] notice period was 3 months. A letter of resignation dated 1st June 2019 from [REDACTED] confirms [REDACTED] tendering [REDACTED] resignation.
3. On 30th October 2019 [REDACTED] via [REDACTED], wrote a letter to [REDACTED] headed "Termination of Work Permit" and stating as follows:

"Please note that your position as a [REDACTED] has been filled. I cannot afford to employ two [REDACTED] for the same position hence, your work permit has been cancelled effective today. Your final salary will be paid to you today, via the Chief Financial Officer. Thank you for your services to [REDACTED]."

You should contact the Cayman Islands Immigration Department within the next twenty-four to forty-eight hours to assess your immigration status."
4. On 29th October (a day previous), [REDACTED] wrote to the Department of Immigration as follows:

I, [REDACTED] do wish to terminate the Captioned Work Permit from [REDACTED] with immediate effect.

My reasons for immediate termination of this employee are based on [REDACTED] unscrupulous and dishonest behavior as it relate to [REDACTED] contract with the Company.

[REDACTED] abruptly resigned with an inadequate period of notice for [REDACTED] position which was a breach of [REDACTED] contract. Because of Our Business Staffing Plan as it related to [REDACTED] position, I negotiated with [REDACTED] to suspend [REDACTED] resignation for a reasonable period of time to allow me to find an adequate [REDACTED] - replacement for [REDACTED] duties.

[REDACTED] also in breach of [REDACTED] contract, Section 21.1 and 21.2 which states the following:

(21) Other Employment

21.1 The Employee must devote the whole of their time, attention and abilities during his/her hours of work to his/her duties for the Employer. The Employee may not, under any circumstance, whether directly or indirectly, undertake any other duties during their hours of work under this employment.

21.2 The Employee may not, without the prior written consent of the Employer (which will not be unreasonably withheld) outside their hours of work with the Employer work for, advise or in any other way assist, whether directly or indirectly, any business or employment which is similar to or in any way connected or in competition with the business of Employer or which could or might reasonably be considered to impair the Employee's ability to act at all times in the best interests of the Employer.

[REDACTED] have chosen to set up a medical clinic and laboratory while working full time at [REDACTED]

Should you require any additional information, please contact the undersigned.

[REDACTED] evidence was that from June 2019, until [REDACTED] came to know that [REDACTED] was intending to work with someone else, that [REDACTED] is not on good terms with that the working relationship was fine. Once [REDACTED] found out [REDACTED] intention to set up elsewhere, [REDACTED] was terminated immediately and without any notice.

6. It transpired that [REDACTED] complaints to Immigration bore fruit and the work permit application was rejected and [REDACTED] was forced to leave island and return to the [REDACTED]

The Tribunal Observations

7. We are satisfied the Employer was on notice of the hearing and decided not to attend.

8. Section 12 of the Labour Act reads as follows:
 12. (1) Where an employer has, subsequent to the expiration of an employee's probation period, terminated the employee's employment the employer shall, upon a request being made by the employee at any time within fourteen days after the termination of his employment, furnish within fourteen days to the said employee a written statement of the reason for the action, and if the employee so requests send a copy thereof to the Director.

 - (3) An employer who furnishes a statement or certificate under subsection (1) or (2) shall be conclusively bound by the contents thereof in any proceeding under this Law concerning the fairness of the dismissal or the employer's liability for severance pay.

9. The letter from the employer to the employee of the 30th of October 2019 constitutes such a written statement of the reason for the termination and it asserts only that the reason for the termination was effectively redundancy. Using that reason, which [REDACTED] is bound by, means that [REDACTED] was inevitably unfairly dismissed as there is simply no way the Tribunal can find that the employer acted reasonably on terminating for redundancy in the situation.

10. For the sake of completeness we also find that the reason as set out in the letter to Immigration of 29 October 2019 would have resulted in a finding of unfair dismissal as well.

11. Whilst an employee is under implied and here express terms to act in good faith and with fidelity to their employer, the circumstances here are that [REDACTED] had fulfilled that obligation by handing [REDACTED] notice in to the employer in June. Upon being asked to stay on past [REDACTED] notice, [REDACTED] cannot then be criticised for continuing to organise [REDACTED] next career move and it appears the actions of [REDACTED] were a particularly unpleasant manipulation of the situation to extract benefit from [REDACTED] and then scupper [REDACTED] future plans at a time that best suited [REDACTED].

Decision

12. The unanimous decision of the Tribunal is that the Complainant was unfairly dismissed and is due compensation as follows;

- Severance of [REDACTED]
- Unfair dismissal compensation [REDACTED]

13. Total award is \$ [REDACTED]

Appeals

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



James Kennedy, Chairperson
Signed this 29th day of March 2021