

**IN THE MATTER OF A COMPLAINT UNDER THE EMPLOYMENT ACT 2000 BEFORE THE  
EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL ("the Tribunal")**

**BETWEEN:**

**Ms. Akilah Trott**

**Complainant**

**AND**

**Respondent**

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**DECISION**

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**Date of Complaint:** 30<sup>th</sup> August 2024  
**Date Investigation Completed:** 25<sup>th</sup> November 2024  
**Date of Referral:** 20<sup>th</sup> December 2024  
**Date of the Hearing:** 16<sup>th</sup> May 2025

**Tribunal Panel Members:** Ms. Kelly Francis, Chairman  
Ms. Judith Hall Bean, Deputy Chair  
Mr. Peter Aldrich, Tribunal Member

**Present:** Ms. Akilah Trott (Complainant) ("They"/"Them")  
Mr. (Respondent)

The Complaint was filed pursuant to provisions of Section 37 of the Employment Act 2000 ("the Employment Act").

**Background**

Further to the hearing held on 16<sup>th</sup> May 2025 ("the Hearing") between Ms. Akilah Trott ("the Complainant") and ("the Respondent/ the Company"). The Complainant is claiming unauthorized deductions pursuant to Section 8 of the Employment Act and is seeking compensation for the loss of sick pay and, pursuant to Section 21, is also claiming failure to receive payment in lieu of notice. The Complainant resigned with an expected termination date of August 9<sup>th</sup> 2024. The Respondent entered discussions with the Complainant regarding an alternate role in the Company. Discussions broke down and the Complainant officially ceased working with the Company on August 23<sup>rd</sup>, 2024.

### **The Hearing**

Prior to the start of the Hearing, the Parties were invited to try to reach an independent agreement, but elected to proceed directly with the Hearing.

It is noted that neither party elected to have witnesses at the Hearing.

**The Tribunal** commenced with the Respondent explaining his standpoint with respect to the end of the Complainant's employment and why the Complainant was not owed any further compensation.

**The Respondent** made the following points during his statement:

1. The Complainant had tendered their resignation, providing four weeks' notice rather than one month stated in the employment contract.
2. Earlier in the week that the Complainant was due to finish employment, discussions were had regarding moving into another permanent role with a slightly higher salary.
3. The Respondent explained to the Complainant that it would take a little time to pull together a new contract.
4. The Respondent confirmed that the Complainant agreed to remain at the Company while the new contract was being prepared.
5. The Respondent however stated that the Complainant's full time employment ceased as planned on August 9<sup>th</sup> and that the Complainant moved into a contractor / temporary employment state and was no longer eligible for standard employee benefits such as paid sick leave.
6. The Respondent acknowledged that the Complainant did not receive any paperwork to support this change in employment status, but stated it was understood that they were no longer a permanent employee.
7. The Respondent confirmed that the Complainant continued to receive their normal salary.
8. On August 13<sup>th</sup> 2024, the Respondent met with the Complainant to talk about the new role and the expanded responsibilities and his performance expectations.
9. On August 15<sup>th</sup> 2024 the Respondent advised the Complainant that he had actually previously offered the new role to someone else who had since which accepted and that he was now presenting her with a contract for her current role at a slightly higher salary.

10. The Respondent stated that upon receiving the alternate contract on August 15<sup>th</sup> 2024, the Complainant called in sick the following day, and did not respond to the offer, requiring him to have to chase the Complainant for a decision on August 19<sup>th</sup> 2024.
11. The Respondent followed up on August 19<sup>th</sup> 2024 by email requesting the Complainant advise him if they were accepting by August 20<sup>th</sup>, 2024.
12. In this same correspondence, the Respondent referenced the fact that the Complainant had fulfilled their contractual obligations regarding their resignation as of August 9<sup>th</sup> 2024.
13. On August 23<sup>rd</sup> 2024, the Complainant finally responded and said that they could not accept the new role.
14. It was the Respondents position that:
  - a. The Complainant ceased being a full time employee on August 9<sup>th</sup> 2024
  - b. For the period August 12<sup>th</sup> – 15<sup>th</sup> 2024 the Complainant was just temping
  - c. For the period August 16<sup>th</sup> - 23<sup>rd</sup> 2024 the Complainant did not work and the Respondent did not feel there was any need for the Complainant to have informed the Company that they were sick, on the basis that as they were no longer a permanent staff member and they were not due any sick leave compensation and had already worked their notice period.
  - d. The Respondent stated that he has had arrangements with people several times before and no paperwork is provided to them, but it is understood that they are not employees of the Company, only temporary workers.

**The Complainant** made the following points during their statement:

1. Shortly after joining the Company, they took on additional responsibilities and had been repeatedly promised a new contract and salary increase but nothing materialized.
2. Finally growing frustrated with the situation, they decided to tender their resignation with an effective date of August 9<sup>th</sup> 2024.
3. The Complainant stated that several of the team were upset over their upcoming departure and petitioned the Respondent to try to find a way for them to stay.
4. The Complainant received an email from the Respondent on August 8<sup>th</sup> 2024 confirming his desire for her to remain with the business. Nothing in that email indicated that employment would still end on August 9<sup>th</sup> 2024. The wording included phrases such as "I have decided that we can continue to work with and develop you" and, "I will have Ms XXX schedule a meeting, so that we are all clear on duties, responsibilities and expectations going forward".
5. The Complainant met with the Respondent and one of the Physicians on August 9<sup>th</sup> 2024, the day she was due to finish, and discussed having her remain with the Company
6. The Complainant confirmed that during that meeting, the Respondent stated it would take some time to pull together a new contract and that she would remain in her current role while that was being prepared.
7. The Complainant stated they were never given any indication that there was any change to their employment status.

8. The Complainant stated that nothing had been completed administratively to indicate a termination of employment. Specifically that all benefits remained intact, there was no request to return company property, have an exit interview or engage in any of the normal administration processes associated with a termination of employment.
9. The Complainant confirmed that they did meet with the Respondent on August 13<sup>th</sup> 2024, to discuss his expectations regarding the new role and they expected to receive the new contract shortly thereafter.
10. The Complainant stated at no time did the Respondent give any indication that the role had been offered to someone else.
11. The Complainant stated that the day that they received the email and contract from the Respondent, they were already feeling under the weather and by the following day, they was not in a position to come to work.
12. On August 16<sup>th</sup> 2024 the Complainant emailed both the Respondent and their Finance person, to say they were sick and unable to report to work.
13. On August 19<sup>th</sup> 2024, the Complainant submitted a doctor's note covering the period from August 16<sup>th</sup> – 23<sup>rd</sup> 2024.
14. The Complainant stated they were shocked by the news about the role change but they were focused on trying to get better.
15. The Complainant stated that neither the Respondent nor the Finance person gave any indication that it was not necessary to call in sick or, provide a doctor's note. Note: the Complainant did receive an acknowledgement to their email hoping they feel better soon, but nothing to indicate that it had not been necessary to let the Respondent know.
16. On August 23<sup>rd</sup> 2024, the Complainant confirmed to the Respondent that they would not be accepting the contract and agreed with the Respondent that they had no further business together and therefore, the Complainant never returned to work at the company. In the same correspondence, the Complainant confirmed they were expecting to be paid for the period August 1<sup>st</sup> - 23<sup>rd</sup> 2024 and did not receive any correspondence from the Respondent to state that this expectation was not accurate.
17. The Complainant summarised the following:
  - a. At no point verbally, or in writing, did the Respondent or anyone else indicate that their employment status had changed
  - b. They are entitled to receive pay for the days they were out sick.
  - c. They believe they are entitled to pay in lieu of notice on the basis that as they continued working past the original termination date. And therefore, the notice period should be reinitiated.

### **Tribunal's Deliberations**

The Tribunal, having heard the representations from both Parties, considered relevant provisions of the Employment Act in determining whether the Complainant is due compensation for the sick days or for pay in lieu of notice.

## DETERMINATION AND ORDER OF THE TRIBUNAL

The Tribunal therefore, in accordance with provisions of Schedule 220 and Section 39 of the Employment Act, awards the Complainant compensation for the five days they were out sick, specifically August 16<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21, 22<sup>nd</sup> & 23<sup>rd</sup> 2024. The sum to be paid shall be calculated based on their prior annual salary of \$60,000.00, less any applicable deductions such as payroll tax. Further, if the Employer has not made social insurance contributions for the Complainant for the period August 12<sup>th</sup> – 23, these contributions must also be made. Payment shall be made no later than June 27<sup>th</sup> 2025.

Additionally, The Tribunal in accordance with provisions of Schedule 2 of the Employment Act, awards the Complainant full reimbursement of any payments related to unpaid medical claims incurred during the period November 7<sup>th</sup> 2023 – March 1<sup>st</sup> 2024 **which remain outstanding**. The costs incurred, some of which the Tribunal appreciates have been settled, are outlined in the following email from the dated November 29<sup>th</sup>, 2024.

From: [Redacted]  
Sent: Friday, November 29, 2024 12:12 PM  
To: [Redacted]  
Cc: [Redacted]; Employer Compliance Admin  
<[EmployerCompliance@healthcouncil.bm](mailto:EmployerCompliance@healthcouncil.bm)>  
Subject: Re: Request to Meet - Employer Compliance

Good Day Mr

Thank you for your email and the details regarding Ms. Trott's pay.

Ms. Trott provided evidence to show that she was reimbursed \$688.86 for three months of deductions for HIP coverage (\$229.62 x 3). Given that Ms. Trott did not have coverage for four months, **an additional \$229.62 in reimbursement is owed**.

The bill incurred by Ms. Trott during the period of non-coverage totalled **\$1110** for services rendered on 29<sup>th</sup> February 2024. You will need to contact [Redacted] to make payment.

In addition, a bill for laboratory services was incurred at [Redacted] totalling **\$1446**. HID confirmed that Ms. Trott would have received coverage for the lab work if she had HIP coverage. As such, you are responsible for payment of the bill and will need to contact the company directly to make payment.

Please confirm your timeline for reimbursing Ms. Trott and making payment to [Redacted] and [Redacted]. A response is required no later than **Friday, 6<sup>th</sup> December**.

Sincerely,

Bermuda Health Council  
Sterling House (1st Fl)  
[16 Wesley Street Hamilton HM 11, Bermuda](mailto:16 Wesley Street Hamilton HM 11, Bermuda)  
Phone: 441-292-6420 | Fax: 441-292-8057

Website: [www.healthcouncil.bm](http://www.healthcouncil.bm)  
Email: [Redacted]

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Based on the evidence provided by way of submitted documentation and testimony, it is the opinion of the Tribunal that the Respondent did not take the necessary steps to terminate the Complainant from their position as a full time employee.

Therefore, the Tribunal was not persuaded by the Respondent that the Complainant had moved to an alternate employment classification. As such:

- The Tribunal was persuaded by the Complainant that they remained a permanent member of staff and therefore were entitled all compensation and benefits as outlined in their contract of employment, specifically in this instance, payment for the sick days taken.
- The Tribunal was persuaded by the Respondent that the Complainant had worked their notice period
- The Tribunal was not persuaded by the Complainant that by extending the notice period by the additional two week period, that the prior notice period worked was void and they are entitled to pay in lieu of notice

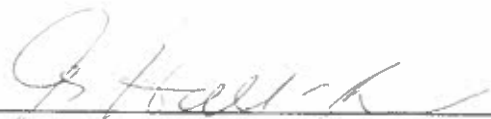
The Parties to this Hearing are reminded that the Determination and Order of this Tribunal is binding and that either Party aggrieved by this Order may appeal to the Supreme Court of Bermuda on a point of law only within 21 days following receipt of notification of the Order.

#### **TRIBUNAL MEMBERS SIGNATURES**



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Kelly Francis, **Chairman**



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Judith Hall Bean, **Deputy Chairman**



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Peter Aldrich, **Member**

**Dated** this 26<sup>th</sup> day May 2025