

**HEARING**

**IN THE MATTER OF A DISPUTE UNDER THE TRADE UNION AND LABOUR  
RELATIONS (CONSOLIDATION) ACT 2021 BEFORE THE EMPLOYMENT &  
LABOUR RELATIONS TRIBUNAL.**

Under **Sections 67 & 80 of the Trade Union and Labour Relations  
(Consolidation) Act 2021,**

**BETWEEN**

**Complainant**

Represented by the Bermuda Industrial Union

**-v-**

**Respondent**

Represented by the General Manager

**DETERMINATION & ORDER**

**THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2021  
BEFORE THE EMPLOYMENT & LABOUR RELATIONS TRIBUNAL.**

**TRIBUNAL HEARING**

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**Members of Tribunal:**      **John Payne, Chairman**  
   **Peter Aldrich, Deputy Chairman**  
   **Dawn Eversley, Tribunal Member**

**Directions Hearing:**      **4th November 2024**

**Hearing Dates:**      **5th May 2025**

**Hearing Places:**      **Department of Labour**  
   **23 Parliament Street**  
   **Hamilton HM 12.**

**Present:**

**Complainant Representative:**

**Ronnie Burgess,**      **General Secretary**  
   **Chief Shop Steward**  
   **Bermuda Industrial Union**

**Respondent Representative:**

**General Manager**

## Human Resources Manager

### **STATUTORY AUTHORITY TO HEAR THE MATTER**

1. The Tribunal Hearing was convened on 5th May 2025. The Chairman confirmed the points to be considered by the Tribunal.
2. The Chairman stated that the Employment and Labour Relations Tribunal Hearing was to be conducted by **Section 44B(2), Section 44C the General Powers**, and that the Tribunal shall regulate its proceedings as it sees fit under **Schedule 2 (20) of the Employment Act 2000 ("the Act")**.
3. The Chairman made opening remarks, and the Parties elected not to engage in meaningful dialogue to resolve their dispute but to have the Tribunal hear the matter.

### **The Issue**

- a) The Complainant is claiming unfair dismissal under Section 28 of the Employment Act 2000.
- b) The BIU on behalf of the Complainant is claiming that the Respondant did not follow the progressive disciplinary procedure as laid down in the Collective Bargaining Agreement Article 41 (2).

### **PRELIMINARY MATTERS BEFORE THE TRIBUNAL**

4. The Chairman indicated that from the documentation, it appears that the Parties were not disputing the events in this matter but just the

process used and the dismissal of the Complainant. Both parties agreed that this was correct.

5. On that basis, the Chairman indicated that the Tribunal was invoking Schedule 2 (20) of the Employment Act that permits the Tribunal to regulate its proceedings as it sees fit.
6. The Tribunal determined they would concentrate and address the concerns regarding the process used.

### **History**

7. The Complainant was employed as a bartender by the Respondent from April 2023 to 12th June 2024.
8. He had an issue with reporting to work on time as scheduled.
9. The Complainant attended a meeting on 18th March 2024 with the Chief Shop Steward, the Restaurant Manager and the Bar Manager to discuss him being late for his shift at 11.00 am .
10. He attended a second meeting on 19 April 2024 with the General Manager, Bar Manager and Chief Shop Steward. This meeting was to discuss the issue where another bartender was absent and the Management permitted the Food and Beverage Captain, a non-Bermudian to cover that period. At the meeting the Complainant stated that he should be compensated for the loss of three hours pay for which he was given cash by the General Manager.

11. During that meeting he was advised according to the Statement of Fact, *that he was consistently late without any repercussions or formal warnings and that effective immediately he will be receiving formal warnings.*
12. It is alleged that a warning was drawn up on 19th April 2024 but it did not state the stage and that the Complainant never saw the document.
13. Another meeting was held on 22nd April 2024 with the General Manager, the Human Resources Manager, Restaurant Manager and the Chief Shop Steward at the request of the Complainant. The meeting was to discuss him coming to work and being told that he was not on the schedule.
14. That resulted in an argument between the Complainant and another worker. The Restaurant Manager intervened and directed the Complainant to leave the property.
15. During that meeting, the General Manager instructed the Complainant to leave the premises immediately and that he would be receiving another warning for taking food out of the cafeteria while off duty. This was drawn up as a First Written Warning. Again, the Complainant alleged that he was not presented with the warning document.
16. The Complainant was terminated on 12th June 2024 for being late on 11th June 2024. He was scheduled to report to work at 3.00 pm but did not arrive until 4.30 pm.

## Discussion

17. The Tribunal questioned both parties regarding the disciplinary process used by the Respondent.
18. The Respondent when questioned indicated that their disciplinary process was:
  - a. Face-to-face meeting: These are documented.
  - b. Manager with the staff member
  - c. Manager Human Resources, Departmental Manager, Shop Steward with staff. This meeting is minute and proactive steps developed, and staff told this is the final warning.
  - d. Termination.
19. It was verified that the process used by the Respondent did not conform strictly with the provisions of the Collective Bargaining Agreement between the Bermuda Hotel Association and the Bermuda Industrial Union.
20. The Respondent confirmed that there had never been any pushback in this regard, and this was the first time the BIU had pushed back. The process had been accepted, it would appear as custom and practice.
21. Article 36 of the CBA, Discipline states *(a) it is agreed that the employee maybe subject to suspension or discharge without notice in cases that involve criminal acts, serious misconduct, and repeated or serious violation of any of the terms of this agreement.* In less serious cases the following procedure shall be instituted: -

*First Offence:                      First Written Warning*

*Second Offence: Second Written Warning*

*Third Offence: The Employee will be subject to discipline, including dismissal.*

22. The Article further states that *Written Warnings, to be valid, must be issued within three working days of the offence. The Shop Steward will sign, acknowledging receipt of the same within a further three working days. The Tribunal noted that the forms used by the Respondent were not the same as in the CBA.*
23. In addition, these forms while making provision for both the Shop Steward and Employee to sign the Disciplinary Action Report form has a statement 'Note: the Shop Steward **or** Employee must sign in the appropriate place within *one (1) week of the date in issuance of this form, or if the matter has been submitted to the Grievance Procedure and not withdrawn, it will be signed immediately*'. (emphasis the Tribunal's)
24. The two Disciplinary Action Report forms contained in the Complainant's bundle did not have the Complainant's signature but were signed by the Chief Shop Steward.
25. The Respondent advised that the Complainant declined to sign the Reports.
26. The Disciplinary Report dated 19th April 2024 listed 11 occasions in which the Complainant was late. The Union did not challenge this. However, while the form was dated 19th April 2024 there was one item dated 21st April 2024.
27. Seeking clarification, the date of 21st April 2024 was an error as the letter was written on the 21<sup>st</sup> April 2024 regarding the meeting of 19th April and this date was inadvertently included.

28. In response to a comment by the General Secretary regarding the Chief Shop Steward and the process; the Chief Shop Steward indicated that she was the only shop steward and reluctantly held that position for the past two years as if no one in the organization wanted it.
29. When questioned, she stated that she stood by the contents in her statement.
30. During an exchange with the Tribunal, the General Secretary restated that the Union does not condone the behaviour of the Complainant. Her original statement was contained in the Statement of Fact.
31. When given an opportunity to speak, the Complainant indicated that he did not receive any paperwork for the 8th of March 2024 and that he does not recall being advised that he would be receiving a warning. He did not recall seeing any paperwork following the meeting of 19th April 2024. His witness statement was also not signed by him.
32. When questioned, the Complainant indicated that he did not sign the warning as he did not agree with it. In response to a question by the Tribunal, the Complainant did not give an acceptable explanation for his lateness, except that he was dealing with issues and thanked the Human Resources Manager for her assistance.

### **Deliberation**

33. The Tribunal considered the process used and not the reason for the termination, as the evidence supported possible dismissal. This position is guided by information contained in the Statement of Case:



- a. "The Union is not supporting this behaviour, we only requested that the Hotel please follow the disciplinary procedure laid down in the Collective Bargaining Agreement."
  - b. "The Union feels this was not a fair dismissal as the proper procedure was not followed in accordance with the CBA."
  - c. "The Union is on the record in regard to members making sure they make their time as scheduled in the workplace; therefore, we are not condoning Bro ; attendance record but are asking that management follow the process."
  - d. In the Hearing, Mrs. Burgess from the BIU stated that "Mr. deserved to get fired and I have told him that."
34. The panel also observed a friendly respectful interaction between the General Secretary and the Hotel, and both parties stated that they enjoyed "good relations".
35. It was noted by the panel that the BIU Shop Steward was an active participant in most, if not all, disciplinary meetings and had signed the Disciplinary Actions Reports on behalf of the Union when asked to do so by the Hotel.
36. It was noted that at no time does it appear that Ms. , in her capacity as Shop Steward, raised any "red flags" to the Union or the Hotel as to incorrect processes being followed by the Hotel. In her Witness Statement for the Hotel Ms. stated: "In your opinion, did Mr. receive the appropriate number of warnings that are stated in the Collective Bargaining Agreement? Yes, that is correct!

37. The evidence presented by \_\_\_\_\_ shows extensive notes and minutes of the meetings that took place between the hotel representatives and the Complainant in an effort to resolve the issues over his employment.
38. Although there is a discrepancy between the Hotel and Union as to the procedure followed in THIS case, the HR Manager confirmed that it is the SAME procedure that has been followed for a number of years and has to date NOT been challenged by the Union. Whilst the Union did not fully endorse this statement, Ms. Burgess did not offer any commentary to contradict the Hotel's position in this regard.
39. The Tribunal accepts that the Hotel believes this method of dealing with disciplinary matters has become the accepted "custom and practice" between the Hotel and the Union.

### **Determination**

40. The Tribunal, having heard from the parties and having reviewed the documentation presented, has determined that:
- a. The process used by the Respondent, while not strictly in accordance with the Collective Bargaining Agreement, was the process normally used by the Parties to resolve matters.
  - b. The Respondent demonstrated it followed the "custom and practice" that has evolved over time at the facility with the Union.
  - c. There was no violation of due process.

### **Post-Tribunal Procedural Matters**

41. According to section 44E, no report on or comment on this matter may be made by either party that is not a fair and accurate report or summary of the proceedings.
42. If either party makes any report on or comment on this matter contrary to **section 44E**, such party shall be liable to a civil penalty.
43. Both Parties have the right to apply to conceal any matter of the Hearing/Award as outlined in **section 44F (3)** Notification and Publication of Award of the Act.
44. According to **section 44 K**, either party aggrieved by this decision has the right to ask a question about interpreting the Tribunal award.
45. Under **section 44O**, either party aggrieved by this decision has the right to appeal to the Supreme Court on a point of law within 21 days after receipt of notification of this award of the Tribunal.
46. The Tribunal does not award legal costs to any party to these proceedings.

### **The Award**

47. The Respondent did not unfairly dismiss the Complainant in accordance with Section 28 of the Employment Act 2000.

## **Tribunal Signatures**



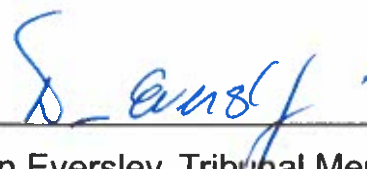
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John Payne, Chairman



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Peter Aldrich, Deputy Chairman



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Dawn Eversley, Tribunal Member

**Date: May 20<sup>th</sup>, 2025**