

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

BETWEEN:

Mr. [REDACTED]

Complainant

AND

Respondent

DECISION

Date of Complaint: 16 October 2024
Date Investigation Completed: 18th November 2024
Date of Referral: 29th December 2024
Date of the Hearing: 28th March 2025

Tribunal Panel Members: Ms. Kelly Francis, Chairman
Mr. Orin Simmons, Deputy Chair
Ms. Valerie Young, Tribunal Member

Present: Mr. [REDACTED] (Complainant – via Webex)
Mrs. [REDACTED] (Managing Director, Respondent)
Ms. [REDACTED] s (Manager, Employee
Respondent)

Witnesses:

Mr. [REDACTED] (Witness for the Complainant – via Webex)

Ms. (Witness for Respondent)
Ms. , Services, Witness for
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 28th March 2024 ("the Hearing") between Mr. ("the Complainant") and Ltd., ("the Respondent/the Company"). The Complainant is claiming unfair dismissal pursuant to Section 28 of the Employment Act and is seeking compensation for the loss of incentive pay; reimbursement of deducted relocation fees; compensation for unfair dismissal; reinstatement or reengagement; a formal acknowledgement from td., for their handling of the termination process and an apology for his mistreatment. It is noted that the Complainant was dismissed during his probation period and his tenure was four months (June 6th – October 9th 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.

The Tribunal commenced with the Complainant recounting his experiences while employed with . Ltd.

The Complainant made the following points during his statement:

1. Prior to relocating to Bermuda from the the complainant states he had a good track record of placements and continued in the vein once joining the Bermuda business.
2. He states that during probation, he was terminated for performance however there were no performance standards in place nor any process for assessing his performance and he is confident that the Company has broken the law by carrying out the termination. He further states that there must be specific goals in place that are shared with the employee at the time of onboarding and that did not take place.
3. The Complainant states no job description was shared with him outside of a two line sentence in the offer letter. The panel asked if there had been an advertisement for the role which would have elaborated in more detail and the Complainant stated he never saw an advertisement, he was an unsolicited outreach and never responded to an advertisement.
4. On arrival, he acknowledges that there was a two week orientation/ training period but still no measurable targets were shared with him.

5. He states that his offer indicated the ability to receive an advance on his commission earnings and while the offer indicated that plan rules would be shared, they were not. He did acknowledge that he did not ask for a copy.
6. With respect to the company breaking the rules, with respect to his final pay, the Complainant states his former employer should not have deducted the cost of the relocation without his consent and have therefore violated Section 8 of the Employment Act. The Complainant acknowledges that he understood he would have to repay the amount, but expected they would agree on a repayment schedule and stated repeatedly that he had not agreed to the deduction.
7. During the probation midpoint meeting, the Complainant did not feel there were any overly serious comments made about his performance and nothing to indicate his continued employment was in jeopardy.
8. In the month following the midpoint meeting, the Complainant felt his performance was strong.
9. Repeatedly throughout the hearing the Complainant stressed that his performance was exceedingly good as evidenced by the number of _____ he made on his own.
10. Following the midpoint probation meeting, the Complainant confirms he held 1:1 meetings with his Manager but states she did not address any problems or concerns, it was more BAU focused discussion.
11. The Complainant further states that at the time of the termination, there were no new issues or evidence of poor performance shared with him.
12. When the Complainant was informed of the decision to terminate him, he stated he begged for a reason as to why and requested detail regarding the specific performance issues but did not receive answers.
13. The Complainant claims the Company accused him of misstating his Bermuda specific _____ experience during the interview which he denies. He states he had not _____ in Bermuda and would not have said that he had. (the complainant confirms that he had in fact not _____ in Bermuda)

The Company then commenced cross questioning. This led to a great many discrepancies between the Company and the Complainant as he consistently refuted nearly every statement made by the Company. Only when pressed, in some instances, he conceded that their statements were correct. Salient points from the Company questioning of the Complainant include:

- The Complainant ultimately confirmed he had received a detailed _____ handbook which the Respondent referred to as the _____ for the _____ and which contained very detailed information regarding their approaches, templates, performance standards, quality controls, etc.
- The Complainant disagreed that during the midpoint review, aspects of concerning performance were shared with him despite the Respondent referring to subsequent email correspondence which indicated that he had; a) received the feedback and b) was aware of the improvements necessary.
- The Respondent stated the Complainant demonstrated a history of lying as seen first during the interview process when he led them to believe he had _____ and then when he indicated a _____ wanted a particular _____ and had not received the information from the

The Respondent states he admitted he just used a : he thought would be acceptable. The Complainant refutes these allegations.

- The Complainant interjected frequently to restate the significance of the contributions he made to the business through his successful . The Company stressed that all of his were made in conjunction with others and under the direction and guidance of his Manager. The Complainant remained firm that he mainly did it all, with little support from the Respondent/Company.
- The Company addressed issues around the accuracy of his work and the request that he start having everything reviewed before sending out. The Complainant denied this despite email evidence to the contrary.

Respondents for the Company made the following remarks in defense of the termination decision:

- Through the combination of orientation meetings, the handbook and the open office environment which fosters real time assistance and feedback, it was not possible for the Complainant to claim he was unaware of expectations.
- During the probation period, the Company stated that it deliberately does not put targets in place as the goal of probation is to settle in and learn their processes, standards, etc., without that additional pressure.
- Prior to the midpoint, it had become clear that the Complainant was not meeting expectations and clear feedback about the concerns was provided.
- The Company did try to work with the Complainant informally to guide him, especially with respect to following their process and quality standards in everything he did.
- The Company notes that it became evident that he did not have the experience which he had previously claimed.
- The Respondent stressed that at no time was the Complainant working solo on a and always had the support of others and as such, were shared across the involved team members / management.
- Despite the feedback provided and the 1:1 meetings with his line Manager, there was no indication that improvement was occurring or could occur and the company lost confidence that the Complainant would be able to ever make the changes needed to remain employed, which is why they made the decision to terminate employment before the end of probation.
- The Company acknowledges that it does have exceedingly high standards with respect to client deliverables and communication and will require edits for grammar as well as content accuracy.
- The Respondent tried in vain through various lines of questioning, to get the Complainant to acknowledge the inaccuracies of some of their claims and to concede that the Company had worked with him to help him improve and was very clear regarding what improvements needed to look like. The Complainant refused to admit anything.

The Complainant challenged the Respondent's testimony:

- The Complainant stated the Respondent's comments were not true.
- The Complainant denied receiving feedback regarding any concerns.
- The Complainant states following the midpoint review he was given additional responsibility, which proves the problems they claim were untrue.
- The Complainant states he was praised for bringing in new business and restated his assertion that he had sole responsibility for "wins".
- The Complainant disagrees with the Respondent's interpretation of the Employment Act with respect to the management of probation.
- The Complainant denied claiming to have _____ knowledge or experience and stated the decision to terminate him was made as a direct result of them realizing he would not be of value as the Respondent's had expected with respect to _____. The Complainant stressed he had not done anything to give the Respondents the impression that he had such experience.
- The Respondent acknowledges he did not request an advance against his commission earnings until after his termination. He feels he had earned approximately _____ if not more.

Witness for the Complainant – (“the Witness”)

- I was employed by the Respondent, but in the office around the time the Complainant was hired in the Bermuda office, consequently, they went through the orientation together.
- The Witness was critical of the orientation programme stating that it was not well organized, and meetings were frequently cancelled.
- The Witness stated that at team meetings he witnessed the Complainant being praised publicly for his contributions, so he knew the Complainant was performing well.
- When questioned by the Respondent, the Witness acknowledged he was employed for an extremely limited time period and within that time, had a considerable number of personal absences and attended a limited number of meetings with the Complainant.

Witnesses for the Respondent

1. [redacted] was responsible for managing the internal human resource function for the Company and confirmed the structure of the orientation programme and that the Complainant, in her opinion, had received all necessary documentation needed to gain familiarity with the role responsibilities and ways of working.
2. [redacted] was the Complainant's direct Manager and confirmed that she worked closely with the Complainant and sat next to him so was available at any point to answer questions and provide the support he needed.
 - She confirmed the belief based on his interview comments that he did have prior experience

- She recounted the situation with the falsification of a [redacted] and confirmed the Complainant's response when challenged and states he admitted to choosing a [redacted] on his own.
- She confirmed she provided direct feedback to the Complainant during the midpoint probation meeting and followed up with an email of specific areas requiring improvement that the Complainant acknowledged.
- She stated that she discussed with the Managing Director that she had lost confidence in the Complainants' ability to improve.
- She confirmed that the Complainant was involved with successful [redacted] but never solo and was always supported by either herself or other team members.

The Complainant challenged the Witness testimony:

- The Complainant pressed [redacted] to agree that he bought in business by himself and was singularly responsible for some successful [redacted], including one at a [redacted]. This was denied by [redacted].
- The Complainant challenged [redacted] to agree how much he had earned in [redacted] she was not able to provide an exact amount but stressed that all [redacted] received would be shared.
- The Complainant denied acknowledging any performance failings and stressed his status as a strong performer. [redacted] reiterated that they had several discussions and engaged in written correspondence focused on the performance challenges.

Complainant's closing Remarks:

- The Complainant repeated his assertion that the termination was not performance related, that he performed well and did not display any detrimental behaviour that warranted dismissal.
- The Complainant believes the Respondent decided they did not want him and their whole attitude towards him changed.
- The reasons for terminating his employment were deliberately kept vague.
- The Complainant contends that the Company/Respondent has violated Section 8 of the Employment Act with regard to unlawful deductions and that he never accepted or gave permission for the relocation amount to be deducted, and he would like it returned to him.
- The Complainant concluded by repeating that this was an unfair dismissal, and he would like to be compensated accordingly.

Tribunal's Deliberations

The Tribunal, having heard the representations from both Parties, considered relevant provisions of the Employment Act in determining whether the Complainant had been unfairly dismissed from his employment by the Respondent during his probation period. The Employment Act Section 19.1-5 makes clear the allowed actions, specifically stating:

Probationary period

19 (1) Subject to this section, a new or promoted employee may be required to serve a probationary period of not more than six months commencing from the date of his employment or promotion.

(2) An employee who is serving a probationary period shall be entitled to receive from his employer a review of the employee's performance on or before the completion of one half of the probationary period.

(3) An employer may, before the expiration of the probationary period referred to in subsection (1) and after conducting a review under subsection (2), extend an employee's probationary period for a period not exceeding three months.

(4) During the probationary period (including any period of extension under subsection (3)), a contract of employment may be terminated without notice—

(a) by the employer for any reason relating to the employee's performance review, performance, conduct, or operational requirements of the employer's business; or

(b) by the employee for any reason.

(5) In the application of this section to an employee who during a period of continuous employment is promoted (and without prejudice to section 27), subsection (4) shall not apply.

(6) The six-month and three-month periods referred to in subsections (1) and (3), respectively, shall not apply to—

(a) customs officers;

(b) fire officers;

(c) police officers;

(d) prison officers; and

(e) such other classes of employee as may be prescribed for the purposes of this section.

[Section 19 repealed and replaced by 2021 : 2 s. 12 effective 1 June 2021]

- Based on the evidence provided by way of submitted documentation and testimony, it is the opinion of the Tribunal that the Respondent followed the legislation satisfactorily. Therefore, the Tribunal was not

persuaded by the Complainant that the Respondents' decision to terminate the Complainant violated the tenets of the Employment Act, specifically sections 19.1-5 which allows for termination while under probation.

- Based on the evidence provided by way of submitted documentation and testimony, it is the opinion of the Tribunal that the Respondent followed the legislation satisfactorily and therefore, the Tribunal was not persuaded by the Complainant that he is eligible for any compensation for damages associated with unfair dismissal in accordance with Section 28 which states:

Section 28, Unfair Dismissal of the Employment Act follows:

Unfair dismissal

28 (1) The following do not constitute valid reasons for dismissal or the imposition of disciplinary action—

- (a) an employee's race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, disability or marital status;
- (b) an employee's age, subject to any other enactment or any relevant collective agreement regarding retirement;
- (c) any reason connected with an employee's pregnancy, unless it involves absence from work which exceeds allocated leave entitlement;
- (d) an employee's trade union activity;
- (e) an employee's temporary absence from work because of sickness or injury, unless it occurs frequently and exceeds allocated leave entitlement;
- (f) an employee's absence from work for any of the reasons mentioned in section 13 (public duties), or due to service as a volunteer fire officer;
- (g) an employee who removes himself from a work situation which he reasonably believes presents an imminent and serious danger to life or health;
- (h) an employee's participation in any industrial action which takes place in conformity with the Trade Union and Labour Relations (Consolidation) Act 2021;
- (i) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of this Act;
- (j) the making of a protected disclosure under section 29A.

(2) The dismissal of an employee is unfair if it is based on any of the grounds listed in subsection (1).

[Section 28 subsection (1)(j) inserted by 2011 : 35 s. 7 effective 21 October 2011; Section 28 subsection (1)(h) amended by 2021 : 7 s. 99 & Sch. 7 effective 1 June 2021]

- The Tribunal was further persuaded by the Respondent that the termination did follow the correct protocol as outlined in both the Employment Act and the Complainant's contract. This includes the deduction of the relocation allowance previously paid to the Complainant.

- The Complainant did not persuade the Tribunal that he is owed any sums associated with successful based on the contract terms outlined and agreed to by the Complainant
- The Tribunal was not persuaded by the Complainant that the Company violated Section 8 of the Employment Act which protects against unauthorised deductions, as the Complainants' contract clearly states how repayment will be handled in an instance where termination (for any reason) occurs within a specified period. The Tribunal was persuaded that acceptance of the employment contract covers acceptance of the repayment requirement. The Tribunal does advise the Respondent to expand upon this wording in their contracts to avoid any future disputes with how the intent is interpreted.

Unauthorised deductions

8 (1) An employer shall not make a deduction from an employee's wages unless—

- (a) the deduction is required or authorised to be made by virtue of this or any other enactment, a collective agreement or a provision of the employee's contract, or by order of any court or tribunal; or
- (b) the employee has previously signified in writing his agreement or consent to the making of the deduction.

(2) Where the total amount of wages paid on any occasion by an employer to an employee is less than the total amount payable on that occasion, the amount of the deficiency shall be treated as a deduction for the purposes of subsection (1).

(3) Subsection (1) does not apply—

- (a) where the purpose of the deduction is the reimbursement of the employer in respect of an overpayment of wages or an overpayment in respect of expenses incurred by the employee in carrying out his employment;
- (b) to a deduction made in consequence of any disciplinary proceedings which were held by virtue of this or any other enactment;
- (c) to a deduction made in consequence of an employee's participation in a strike or irregular industrial action short of a strike that results in a withdrawal of labour.

DETERMINATION AND ORDER OF THE TRIBUNAL

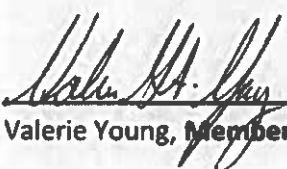
The Tribunal therefore, in accordance with provisions of Schedule 2 of the Employment Act, does not award the Complainant any compensation.

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



Kelly Francis, Chairman

Orin Simmons, Deputy Chairman

Valerie Young, Member

Dated this 28th day of April 2025