

IN THE MATTER OF
THE EMPLOYMENT ACT 2000 (THE ACT)
BEFORE THE EMPLOYMENT AND LABOUR RELATIONS
TRIBUNAL (THE TRIBUNAL)

BETWEEN

SURLENA SMITH - THE EMPLOYEE

AND

THE EMPLOYER -

Hearing Date: March 9th, 2023

Tribunal Members: Dr. Michael Bradshaw, Chair
Derrick V. Burgess, Deputy Chair
Judith Hall Bean

Present: Ms. Surlena Smith

The dispute filed under Section 37(4) of the Act

The employee is seeking:

1. Unpaid wages in the amount of \$7,139.48
2. 1 weeks' vacation pay

It has been acknowledged by the employer that a new statement of employment dated 4th April 2021 with less favorable terms in which the employee did not accept or signed (contrary to Section 6 subsection 5b of the "Act").

The employer has confirmed that the salary was decreased as at 4th April 2022 to June 2022. A total of 12 weeks.

Social Insurance and Health Insurance were deducted from the employee but not submitted/paid to Social Insurance or Health Insurance Company.

The employee has an unpaid bill from her doctor for \$992.00 – not paid by the insurance company because the employer did not pay the Health Insurance.

The employee resigned citing the reasons effective 2nd July 2022 as per her letter of resignation dated 25th June 2022 as per the Act.

The employee (SS) as per the signed contract commenced employment with The _____ on 22nd June 2021 and resigned on 25th July 2022.

DELIBERATIONS:

1. There is a signed contract dated 22nd June 2021 and signed by the employee (SS) and the Director (BT) on 22nd July 2021. This is the only valid and signed contract presented to Tribunal members.
2. In no.4 of the contract fourth bullet point states "This compensation structure is to be fixed for 1 year, to be clear, there will be no contract adjustments in the first year".
3. No. 5 of the contract states deductions:
Social Insurance \$143.68
Health Insurance \$519.81
Payroll Tax 6%
4. Omitted from the contract/statement of employment are any deductions or provisions for pensions (contrary as per the "Act").
5. The employer has confirmed that she has no record or proof that she paid the employee (SS) neither \$2,037.32 on 21st November 2021 nor \$67.32 on 21 December 2021. No consent or agreement to make any deductions from the employee (contrary to section 8 (1A, B) of the "Act").

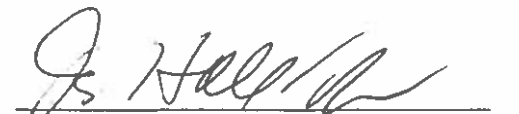
TRIBUNAL DECISION

1. The employer ' _____ GROUP' pays the Insurance Company and Government Social Insurance and Payroll Tax as per the law for the entire term of the employment of (SS) fore with.
2. Settle the claim by the Doctor/Hospital of \$992.00 immediately.
3. Pay the employee (SS) 2 weeks' vacation pay as per the Employment Act 2000.
4. Pay the employee (SS) the difference of the wage decrease of \$113.60 weekly for 12 weeks for a total of \$1,363.20.
5. Pay the employee (SS) for wages not paid in the amounts of \$2,037.32 and \$67.32 for a total of \$2,104.64.
6. The salary/wage awards are to be paid as per the rate outlined in the signed contract dated June 22nd. 2021, and signed July 22nd. 2021.
7. The employee was constructively dismissed (section 29 subsection (1, 2)) therefore we have awarded the employee four weeks' pay.
8. Finally, The Tribunal finds that the employer has contravened Section 6 subsection 2(j) of the Act and therefore in accordance with Section 6 subsection 7 and Section 44 m imposes a civil penalty of \$1,250.00.
9. Proof of payments via receipts/etc must be submitted to the Department of Labour and Workforce Development within thirty (30) days of receiving the tribunal's decision, for the attention of Mr. D. Ebbin.

Dated this day 30th March, 2023



Mr. Derrick Burgess – Deputy Chair



Mrs. Judith Hall Bean – Tribunal Member