

IN THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL

IN THE MATTER OF A COMPLAINT UNDER THE

EMPLOYMENT ACT 2000

BETWEEN

(Complainant)

AND

(Respondent)

Members of Tribunal:

Jocene C. Wade (Chair),

McKeisha Smith (Deputy Chair),

Orin Simmons (Tribunal Member)

Substantive Hearing Date: July 7, 2025

Place: Ministry of Economy and Labour,

3rd Floor, Sophia House,

Hamilton HM 12

TRIBUNAL REPORT / SUBMISSION ON CONSTRUCTIVE DISMISSAL

1. INTRODUCTION

1.1 This report outlines the Tribunal's findings and reasoning regarding the complaint brought by [REDACTED] which alleges constructive dismissal and unlawful deductions of wages. The Tribunal does not address any claims related to discriminatory treatment or human rights matters, as these are outside its jurisdiction under the Bermuda Employment Act.

2. JURISDICTION

2.1 The Tribunal convenes under the authority of the Employment Act 2000. Its jurisdiction and powers are exercised in accordance with this Act, specifically addressing matters under Section 29, concerning constructive dismissal allegations, and Section 40, regarding remedies and enforcement.

2.2 The Department Manager's report, included in the Respondent's bundle, was admitted into evidence. The Manager did not attend the hearing for cross-examination and gave no advance notice of non-attendance. Accordingly, the Tribunal has given lesser weight to that unsworn report and reserves the discretion to accept or reject any unsworn evidence presented by management.

3. STATUTORY FRAMEWORK

3.1 Relevant provisions of the Employment Act 2000 relied upon in this report: contracts of employment; itemized pay statement; requests for flexible working and employer responses; the statutory test for constructive dismissal (Section 29); provisions concerning reasonable accommodations for lactation (including breaks and facilities); procedural requirements for employer investigations; maternity provisions and return-to-work processes; and Tribunal powers and remedies (Section 40C).

3.2 The Tribunal also considered applicable Bermuda authorities regarding constructive dismissal and the implied term of mutual trust.

4. STATEMENT OF FACTS

4.1 Employment and return from maternity leave

- [REDACTED] commenced employment on 1 December 2021 and completed probation on 1 March 2022.
- She notified the Respondent of pregnancy on 9 April 2024, commenced maternity leave on 7 October 2024, and returned to work in January 2025.

4.2 Requests for accommodation and employer responses

- Prior to and after returning from maternity leave, [REDACTED] requested reasonable lactation accommodation and modest scheduling flexibility to manage breastfeeding/expression.
- On 25 February 2025 management denied a request for flexible working arrangements.
- On 3 March 2025 management directed that expressing occur during scheduled breaks and in specified rooms, and suggested use of a bathroom when private facilities were unavailable.
- A requested internal department transfer was refused.

4.3 Other adverse conduct and payroll issue

- Early February 2025 (3–7 February) wages were withheld. [REDACTED] produced a doctor's note for sickness for that period.
- On 6 March 2025 an HR meeting included an allegation that [REDACTED] had falsified sickness records and an investigation was announced.
- [REDACTED] resigned by email on 9 April 2025 after repeated efforts to obtain accommodation and internal resolution.

5. ISSUES FOR DETERMINATION

5.1 Whether the Respondent's conduct (including denial/restriction of reasonable lactation accommodation, rigid break enforcement with suggestion of bathroom use for expressing, accusatory HR conduct, and withholding of pay) amounted cumulatively to a fundamental breach of the implied term of mutual trust and confidence and therefore constituted constructive dismissal under Section 29 of the Employment Act 2000.

5.2 Whether unlawful deductions of wages were made for 3–7 February 2025 and the appropriate remedial orders.

6. ANALYSIS AND FINDINGS

6.1 Legal Findings - Constructive Dismissal

Under Section 29 of the Employment Act 2000, an employee is deemed to have been dismissed when the employer repudiates the employment contract through conduct that amounts to a fundamental breach, prompting the employee to terminate the contract in response. A continuation of employment becomes unreasonable when the employer's conduct significantly undermines mutual trust and confidence. Jurisprudence indicates that cumulative actions, even if minor on their own, may collectively constitute a fundamental breach of the contract.

6.2 Application to the Facts - Lactation Accommodation and Break Enforcement- The Respondent's insistence that the employee utilize her two (2) scheduled 15-minute break

periods and her lunch hour for breastfeeding — while indicating that any time exceeding these breaks would be deducted from her lunch period — fails to provide adequate and reasonable accommodations. Additionally, the suggestion that she use bathrooms when private rooms were unavailable and the refusal to grant reasonable additional lactation time further underscore the lack of consideration for her needs.

In accordance with the Bermuda Department of Health's guidance on breastfeeding, it is recommended that employers provide a private room for breastfeeding or expressing milk, along with flexible breaks to accommodate nursing mothers. Additionally, employers should ensure that there is a safe area for the storage of expressed milk, such as a refrigerator or freezer. These measures are essential in supporting the needs of nursing employees and fostering a breastfeeding-friendly workplace environment, aligning with best practices for maternal support.

The Tribunal acknowledges **Bermuda Breastfeeding Awareness Week**, observed from 5 to 9 August 2026, and recognizes the important work undertaken by the Bermuda National Breastfeeding Committee and the Department of Health to promote breastfeeding and support the health and wellbeing of children and families in Bermuda.

The Tribunal recognizes that breastfeeding is an important investment in the health and wellbeing of children and parents should be provided with appropriate information, encouragement, and support throughout their breastfeeding journey. The observance of Bermuda Breastfeeding Awareness Week serves to highlight the importance of creating a supportive and informed environment for mothers and families.

The Tribunal further acknowledges and commends the contribution of healthcare professionals, volunteers, and families who support breastfeeding initiatives throughout Bermuda. Their continued efforts help to strengthen public awareness and promote positive health outcomes for present and future generations.

6.3 Procedural and accusatory conduct, and withheld wages-

The allegation at the HR meeting that [REDACTED] falsified sickness records, combined with withholding pay for 3–7 February 2025 despite production of a doctor's note, further eroded mutual trust and confidence.

On the evidence before the Tribunal (including the doctor's note and lack of demonstrable lawful justification or completed investigatory outcome), the withholding of wages for 3–7 February 2025 was not shown to be lawful.

6.4 Cumulative Effect and Timing of Resignation

When assessed cumulatively, the persistent failure to provide reasonable lactation accommodation, the rigid and punitive enforcement of breaks (including deductions for minor overages of 5 to 10 minutes), the suggestion to use bathrooms for expressing milk, the

accusatory behavior by HR, and the withholding of wages collectively amounted to a fundamental breach of the implied term of mutual trust and confidence.

tendered her resignation on 9 April 2025, following contemporaneous documentation of her efforts to seek accommodation and internal remedies. Her resignation occurred within a reasonable timeframe following the breaches, which, based on the evidence before the Tribunal, lacked adequate and proportionate operational justification for the refusals.

7. FINDINGS

7.1 Constructive dismissal

The Tribunal finds that the Respondent's cumulative conduct amounted to a fundamental breach of the employment contract and a repudiation of the implied term of mutual trust and confidence.

terminated her contract in direct response. She was therefore constructively dismissed pursuant to Section 29 of the Employment Act 2000.

'Constructive dismissal'(Section 29) - An employee is entitled to terminate his contract of employment without notice where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship, having regard to the employee's duties, length of service and circumstances. An employee who terminates his contract pursuant to subsection (1) shall be deemed to have been unfairly dismissed for the purposes of this Act.

7.2 Withheld wages / unlawful deduction

On the balance of probabilities, wages for 3-7 February 2025 were withheld without lawful justification. The Tribunal finds an unlawful deduction occurred and orders repayment as set out below.

8. ORDERS

8.1 Findings and statutory basis

The Tribunal formally finds constructive dismissal under Section 29 of the Employment Act 2000 and makes the remedial orders below pursuant to Section 40 of the Employment Act 2000.

8.2 Monetary relief

Compensation in lieu of notice and related dismissal losses: the Tribunal grants interim payment of six (6) weeks' pay as loss in lieu of notice, calculated from the Complainant's ordinary weekly rate as at resignation.

The interim sum ordered is BMD\$ 6,252.00 (based on a weekly rate of BMD \$1,042.00); the precise sum will be finally calculated if disputed and adjusted for any lawful deductions.

Repayment of wages withheld: the Respondent is ordered to repay wages unlawfully withheld for 3–7 February 2025. If the parties dispute the precise sum, the Respondent must produce complete payroll records to the Tribunal within 14 days of this Order for determination.

8.3 Non-monetary orders (compliance to occur within stated timeframes)

Within 28 days, [redacted] shall provide and maintain a private, lockable, non-bathroom lactation room on its premises equipped with seating, a power outlet, access to hand-washing or a sink, and refrigeration for expressed milk where reasonably practicable as recommended by the Bermuda Department of Health's Guidance on Breast feeding.

Within 28 days, [redacted] shall adopt and publish a written Lactation/Breastfeeding Accommodation Policy and provide a copy to the Tribunal. The policy shall specify reasonable paid lactation breaks, modest scheduling flexibility, an internal request procedure, confidentiality protections, and a managerial escalation route.

Within 60 days, [redacted] shall deliver managerial training on the policy, reasonable accommodations, privacy/confidentiality, and non-discrimination, and provide written confirmation and supporting documentation to the Tribunal.

9. OTHER MATTERS

9.1 Evidence relied upon

The Tribunal's findings rest on witness evidence, documentary material tendered at hearing (including the doctor's note and email correspondence), and the absence of a lawful completed investigatory outcome from the Respondent concerning the payroll deduction allegation.

[redacted] (the Complainant) submitted a doctor's note to her employer. The employer disputed its authenticity, asserting that the Complainant was not ill and that the note was fraudulent. The Tribunal has taken these competing assertions into account when assessing the evidence.

If the Respondent produces additional credible evidence in response to the payroll disclosure Order within the 14-day period, the Tribunal will consider it and may vary the repayment requirement if justified.

10. CONCLUSION

10.1 For the reasons set out above, the Tribunal finds that [redacted] was constructively dismissed under Section 29 of the Employment Act 2000, records findings supportive of discrimination principles as interpretive guidance, finds an unlawful deduction of wages for

3-7 February 2025, and orders the monetary and non-monetary relief set out in paragraphs 8.2-8.3 above.

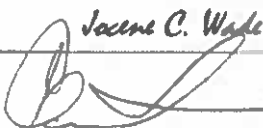
10.2 For the reasons set out above, and pursuant to Section 29 and Section 44B of the Employment Act 2000 (and relying on supporting authorities *Thomas v Fort Knox Bermuda Ltd*; - authority applying the implied term of mutual trust and confidence and recognizing that cumulative unreasonable conduct by an employer can amount to a fundamental breach permitting resignation and a finding of constructive dismissal and *Robinson v Elbow Beach Hotel*), Case law authorities cited and relied upon (as applicable to Bermuda jurisprudence on constructive dismissal and implied mutual trust and confidence): the Tribunal orders the monetary and non-monetary relief set out in paragraphs 8.2, 8.3 above.

10.3 The Tribunal retains jurisdiction to resolve disputes concerning calculation of monetary awards, compliance with non-monetary orders, and to hear any further application for relief or enforcement.

~~10.4 Any party aggrieved by this decision may exercise their right of appeal as provided by law.~~ Appeals from decisions of the Employment and Labour Relations Tribunal must be pursued in accordance with Section 44O of the Employment Act 2000. Parties are required to consult Section 44O for the applicable grounds, time limits, and procedural requirements for lodging an appeal. Furthermore, notice of any appeal must be served on both the Tribunal and the other party in accordance with the stipulations set forth in that section.

Signed:

McKeisha Smith — Deputy Chair 

Jocene C. Wade — Chair 

Orin Simmons — Member 

Date: August 17th, 2026

