

IN THE BERMUDA EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL

IN THE MATTER OF THE EMPLOYMENT ACT 2000 ("THE ACT")

BETWEEN

Complainant

- v -

Respondent

DECISION

Date of Hearing: 16th July 2026
Final Submissions: 21st July 2026

Tribunal: Craig Rothwell
Derrick Burgess
Dawn Eversley

Parties: Complainant appeared in person
Respondent represented by Marc Daniels of Marc Geoffrey

1. _____ was employed by _____ as an Assistant Logistics Manager from on or around 8th October 2021 until his summary dismissal for serious misconduct on 20th February 2024. Prior to 2021, he had worked as an independent _____ agent for _____ since July 2020. _____ filed a complaint of unfair dismissal together with additional complaints that he had not been paid for public holidays that he had worked, had not been permitted a meal break every five hours, nor had been allowed a rest period of 24 hours each week.
2. Both parties filed witness statements and the Tribunal also heard from the witnesses in person. The Tribunal heard evidence on behalf of _____ from _____, the Chief Executive Officer and Founder, _____ a Vice-President and _____, the Chief Financial Officer (and _____ In support of _____, two former employees of _____ attended and provided evidence,

, a former
Manager as well.

: and , a

Unfair Dismissal

3. The complaint of unfair dismissal was focused primarily on the evidence of one day's events. Although there was conflicting evidence given by and about past disciplinary warnings, the key issue was whether actions on 20th February 2024 could amount to serious misconduct. It is therefore that day's events that we need to consider.
4. Much of the evidence from the witnesses that gave evidence in relation to the events, and , was in agreement. was approximately an hour late for work that day. This was not the first time either as admitted and as both and also confirmed in their evidence in acknowledging , propensity for being late on occasion whilst they worked with him.
5. On this particular occasion, the buses were prioritizing school routes and had not collected whilst he was waiting at his usual bus stop at 7.15am to enable to meet his start time of 8 am. Unfortunately for , he could not inform of this as he had no credit remaining on his phone and he could not credit his phone account as he had insufficient funds in his primary bank account at the time. He therefore arrived at work late having not been able to notify anyone.
6. By this time Customer Service Representative team had already become aware that was not present and had contacted who came in to work to cover operations, arriving just after . Although there was much debate at the hearing as to how much difficulty lateness caused due to the working remotely from the that is not so relevant as what occurred after his arrival as it is those events that led directly to his dismissal. Insofar as it is relevant, the Tribunal accepts that it was important for to arrive on time, even on a Monday morning as the slowest operational time for and even though there were call centre colleagues available, as he was meant to be the local manager on site opening up and assisting and overseeing any orders being made. We accept description that the "phones were ringing off the hook" to the extent that it meant calls were already being made to prior to arrival that he should have been present to oversee and/or deal with.
7. After his arrival, and questioned why he was late and upon hearing his explanation of the non-stop buses and lack of credit on his phone and bank account, together with the fact that this was not the first time that had been late, they decided to suspend without pay. In other words, send him home for the day. This was immediately confirmed to at his workspace. Both and remained there whilst then packed up to leave. took umbrage at this and asked , if he had anything further to say (as

described by). and had essentially the same recollection stating that said, "What? You have something to say?".

8. Where there is disagreement on this, it was the tone and manner in which it was said with denying that it was said aggressively, but accepting that he was annoyed whereas and viewed it as aggressive, hostile and disrespectful. The Tribunal prefers the evidence of and that it was stated in an aggressive and provocative way. The Tribunal accepts that was upset and embarrassed and reacted in the way he did as a result of this. There is no question then that was the instigator of the escalation of the events which followed.
9. Unfortunately for he did not have an employer prepared to leave his disrespectful comment unchallenged and simply ensure that was left to control his emotions and make his way out. It was agreed by all that then raised his voice saying "What did you say?" or something very similar and then stepped into the workspace towards . then states that he went on to say that was not showing any respect to him or . There is then a difference as to who took a further step aggressively towards the other with and each saying it was the other. ' evidence was that it was , who did so and who raised his voice significantly again. Although we accept that may have bias towards her employer, , she gave her evidence in a very straightforward manner and it is accepted that it was in all likelihood who took the further step.
10. then stepped between and to attempt to prevent any physical altercation. admits that another colleague stepped in to restrain him. stated that he did not need to be restrained and he walked away and down the hallway back to his office. stated that was walked away by other members of staff. We find that was restrained (as he admits) and that did walk away accompanied by other staff rather than being 'walked away' as describes.
11. Then the real discrepancy in evidence occurs. stated that he then simply collected his belongings and left the premises whereas stated that attempted to follow him and yell at him in what appeared to be an effort to fight him and that he had to be escorted out of the building by a colleague, . agrees with this stating that continued to follow down the hallway and continued to "spew inappropriate comments in an attempt to almost bait into a physical altercation". She stated that this resulted in informing that he was being terminated due to gross insubordination.
12. We also have the evidence of whose office was down the hallway near to office. She had not seen the incident from the start but had heard call out for help. She then recalls that after had returned to his office, threw his lunch bag onto the floor and lunged towards with what looked

to be the intention to fight him. This occurred directly outside her office door hence how she was able to witness this.

13. Assessing this dispute on the evidence, we firmly prefer the evidence of witnesses. Had [redacted] left without further incident and without any further provocation on his behalf as he suggested, we learnt during the evidence at the hearing that there was no need for [redacted] to leave the building by walking down the corridor past [redacted] office. The alternative way that he often used could have readily been taken by him. Instead, there is no doubt that [redacted] followed [redacted] down the corridor whilst restrained, rather than taking the option of leaving the building via the alternative exit.
14. Whilst being cautious of the close family relationship between [redacted] and [redacted] we nonetheless find that [redacted] also gave her evidence in a straightforward manner without any indication of embellishment or bias. Her account of witnessing [redacted] throw down his bag on the floor just outside her office next to [redacted] office is evidence that is wholly consistent with that of [redacted] and [redacted] and which makes clear that in his state of heightened anger and emotion at the time, it was [redacted] that was the person spoiling for a fight.
15. As a consequence of [redacted] behaviour, [redacted] confirmed his dismissal with immediate effect on 20th February 2024 by way of an email with his final pay on 26th February 2024. This was after [redacted] had given his account of events in an email dated 23rd February 2024 in which he concluded: "I agree that this was indeed a gross misconduct that was a result of the CEO of [redacted] who, on more than one occasion, has shown an inability to keep his temper under control. There have been multiple incidents where [redacted] has displayed this same kind of behaviour towards other employees proving that he is easily triggered and lacks self-control".
16. Whether or not [redacted] intended to mean that he agreed he committed gross misconduct in the sentence above in his argument that the blame should be shared with [redacted] the Tribunal agrees that [redacted] actions warranted immediate dismissal. Spoiling for a physical fight with your own employer and having to be physically restrained by at least one colleague from doing so falls squarely within any definition of serious misconduct and clearly represents a fundamental breach of the mutual trust and confidence necessary between any employer and employee.
17. There was no doubt that [redacted] was the initial aggressor with his comment and then continued his aggression long after [redacted] had regained his composure. [redacted] had the option to walk out the other exit rather than following [redacted] down the corridor and, very unwisely, he did not choose that path. Whilst [redacted] may have behaved more professionally himself, that cannot excuse [redacted] ultimately wholly inappropriate response to being informed that he was being suspended from work for one day.

18. The Tribunal therefore finds that [redacted] was guilty of serious misconduct and that it was such that it was unreasonable to expect [redacted] to continue to employ him. He was fairly dismissed by [redacted]

Public Holiday Pay

19. In summary, [redacted] complained that the \$100 extra pay he had received for each public holiday that he had worked was insufficient. Instead he believed that he ought to have been paid \$295. This was based on his monthly salary of \$4,333.33 resulting in a working day being approximately \$197 so meaning that a time and half premium would be approximately \$295.
20. However, [redacted] failed to take into account that he had been paid his usual pay for each public holiday worked already. Having been paid this amount i.e \$197 as part of his normal monthly wage, the amount needed to be paid to him to make up the difference to the overtime rate of \$295, would actually be \$98 according to his own approximate calculation. He had therefore in fact been paid more than this in receiving an additional \$100 for each public holiday worked by him.

Meal breaks

21. Section 10A of the Employment Act 2000 became effective on 1st June 2021 and required that an employer should not require an employee to work for more than five hours continuously without a meal break of at least 30 minutes and that no work should be performed during the meal break without the consent of an employee.
22. [redacted] stated that no time was allowed to take meal breaks and there was no reference to the right to do so in the policies and handbooks provided to staff. All meals had to be taken whilst being eaten at desks. This was also supported by [redacted] who gave similar evidence. When this was raised at a management meeting, the initial solution was to extend the working hours (for example, from 8am – 5pm to 8am – 6pm) rather than being provided with a set lunch break time within existing hours.
23. [redacted] evidence was that as a manager, [redacted] had full autonomy to take a break as and when required and no clocking in was required. [redacted] required though that managers had regard for the peak periods of operation, namely opening, lunch, dinner and closing which required full attention and supervision with breaks encouraged outside of these periods when possible. [redacted] evidence was that [redacted] exercised his rights to breaks throughout his shift. Both [redacted] and [redacted] stated that there was sufficient support by other managers, including [redacted] herself, to ensure coverage and allow meal breaks.
24. The Handbook updated in September 2022 referred to Meal Breaks as follows: “To the extent possible, breaks will be provided in the middle of the work periods. Due to the nature of hospitality, breaks during traditional lunch times are not permitted. Since this time is counted and paid as time worked, your breaks can be allowed if sufficient coverage is present, and not during busy periods. (Busy periods can include, but are not limited to 12pm – 2pm / 6pm – 9pm).”

25. evidence, which derived from her time working at at the same time as that of was persuasive. She explained that she always packed her lunch each day as the expectation was that she should eat her lunch whilst working at her desk and that if an employee left their station, the expectation was that this should be only for a short period of time with a prompt return. Her evidence was that she had specifically asked to leave on occasion and this was refused. She was basically at her desk all shift other than visits to the restroom.
26. The Tribunal therefore accepts and evidence that were not abiding by the Section 10A requirement to enable a meal break of at least 30 minutes after having worked for more than 5 hours during certain periods of their employment. There should have been a prompter recognition of the change in the Employment Act in 2021 and extending the shift hours was not the solution to this.
27. should therefore ensure in the future that Section 10A is followed. Their most recent version of the Handbook refers now to the legal requirement of 30 minutes break after a maximum of 5 hours' work which is a step in the right direction to bring this right to the attention of all employees. It should also be followed in practice.
28. claims the sum of \$4,997.38 based on his hourly rate for all his missed lunch breaks (437 of them) for the period from 2021 to 2023. The Tribunal is doubtful that was unable to take a break anywhere near the number of 437 occasions claimed by him, accepting statement that was able to take personal breaks for business and his music, and did so on occasion, but as there is no requirement that meal breaks be paid by the Employment Act 2000, there is no basis to make this claim for outstanding pay in any event.

Overtime and Hours of Work

29. complained that although his contracted hours as an Assistant Logistics Manager were 45 hours per week, due to the nature of the business, he frequently worked in excess of this. In particular, he complained that there were regular breaches of Section 10 of the Employment Act 2000 requiring that each employee should be provided with a rest period of at least 24 consecutive hours in each week between 2021 and January 2023 when staff were required to attend mandatory Monday morning meetings, often lasting an hour or more. Due to complaints from staff, the Monday meetings were changed to Tuesday afternoons from January 2023.
30. response was that no overtime payments were required to be made as was a salaried member of staff holding a managerial position and that his contract required him to work in excess of 40 hours. Bonuses were also paid at the end of each year to take account of the extra hours worked. evidence was that she scheduled shifts so that each manager was assigned 45 hours each week on a consistent basis. Whilst there might have been some weeks that worked more than 45 hours, on some

weeks it was less. Irrespective of the hours worked, he was paid the agreed monthly salary in accordance with the contract. She also accepted that meetings were held on Monday mornings for a period as that was the slowest period so as not to disrupt operations. was not off work every Monday and therefore, he was not always affected.

31. also stated that there might be some occasions when or other employees might have had to work 6 days in a row up to Sunday and then have to attend on a Monday morning, but then they would have had the Tuesday or Thursday off the following week. She also stated that they were permitted to switch shifts with colleagues. She did her best to accommodate preferences for early or late shifts with some, like , preferring to avoid the morning shift.
32. contract stated that he was a managerial employee receiving standard monthly compensation and required to work certain shifts from Monday to Sunday "and at other times as the position requires; with at least one (1) day off per week". However, it failed to include the standard provision in accordance with Section 9 of the Employment stating that his annual salary had been calculated to reflect the fact that his regular duties are likely to require him to work, on occasion, more than 40 hours a week. Instead it referred only to the fact that he would work a "Total of 45 hours per week". It also failed to state that it had been agreed that the overtime rate should not apply.
33. Whilst the usual wording was not included in the contract, on the basis that it is clear from its overall terms that it is a managerial contract and it does refer to the hours being worked as greater than 40 hours (i.e. 45 hours) together with the albeit brief statement that the manager is required to work "at other times as the position requires", the Tribunal is on balance prepared to accept that there is no breach of Section 9 and the expectation of any overtime pay does not arise. It also takes into account that there was no evidence that raised the issue of paid overtime during his employment, but rather was concerned that he was working longer than the scheduled hours as he often had to wait for the last delivery before being able to end his shift.
34. However, a review of the shift schedule produced by for the period from November 2021 until his dismissal (attached at Schedule 1) shows that for the period from the commencement of his employment as a manager until December 2022 when the holiday period commenced and the shift schedule was changed in January 2023, was consistently assigned between 46 – 48 hours each week. It was only on 3 weeks during this period that he was assigned 45 hours or less a week in accordance with the terms of his contract.
35. was therefore mistaken when she stated that the hours balanced out during this period of time. Based on the schedules she produced each week, was being requested to work hours consistently in excess of 45 hours. Hence whilst the Tribunal is prepared to err in favour on the issue of overtime pay, it considers that there has been a breach of the contract by such a consistent over-assignment of hours each week above the stated total of 45 hours. It agrees with comment that the total of 45 hours stated in the contract was likely to have made the position seem more appealing

to potential candidates who then subsequently found out that the hours were consistently greater each week (until the new schedule was introduced in January 2023).

36. Therefore, the Tribunal orders that [redacted] should receive pay for the additional 97.5 hours assigned to him during this period at his hourly rate of \$23.58. This is based on his annual salary of \$52,000 and annual hours of 2,205 (49 weeks x 45 hours) and so produces a total of \$2,299.05.

37. In relation to the breach of Section 10 requiring the rest period of 24 hours in each week, it would have been helpful if [redacted] had highlighted specific examples of weeks when he stated this occurred. Nonetheless, upon the Tribunal's review of the rostered schedule he provided, although there are no actual examples of 6 days worked followed by a Monday meeting, there were many examples of when 7 days in a row were scheduled for [redacted] in the period from November 2021 until the end of his employment. These numerous periods are listed below:

3rd – 9th November 2021
16th – 23rd November 2021
7th – 13th December 2021
15th – 24th December 2021
4th – 12th January 2022
25th January – 1st February 2022
16th – 22nd February 2022
3rd – 9th March 2022
16th – 23rd March 2022
25th March – 1st April 2022
13th – 19th April 2022
21st – 28th April 2022
5th – 11th May 2022
17th – 24th May 2022
26th May – 1st June 2022
21st – 29th June 2022
27th July – 5th August 2022
25th – 31st August 2022
7th – 14th September 2022
22nd – 28th September 2022
30th September – 7th October 2022
19th – 29th October 2022
9th – 16th November 2022
24th November – 2nd December 2022
9th – 16th December 2022

8th – 14th February 2023
3rd – 9th May 2023

6th – 12th October 2023

8th – 15th November 2023

30th November – 7th December 2023

38. The rostered records demonstrate that after January 2023 and the change to the 9 hour shift schedule, there was a clear improvement in the scheduling by [redacted] so that no more than 6 consecutive days were worked in a row other than the 5 occasions identified above. However, prior to this date, this occurred on a regular basis and multiple breaches of Section 10 occurred.
39. Had this Tribunal the power to impose a fine on [redacted] for these multiple breaches which in all likelihood affected many other employees than [redacted] it would not hesitate to do so. Unfortunately, it does not have such power and can only state that [redacted] should ensure that it fully complies with this provision henceforth.

Statement of Employment

40. The final issue that arose during the course of the Tribunal was that [redacted] had a practice that, although it issued written contracts for managers, once signed by them, the copies were not provided to them. This was confirmed by both [redacted] and [redacted] stated that they were available electronically but this was not agreed by these witnesses.
41. Section 6 of the Employment Act 2000 requires that statements of employment be given to every employee and a failure to do so makes an employer liable to a civil penalty by Section 6(7).
42. The Tribunal finds that there has been a contravention of this section by [redacted] and imposes a civil penalty of \$2,500 in accordance with Section 44M of the Employment Act 2000 payable to the Consolidated Fund.

Conclusion

43. Whilst [redacted] was found to have been fairly dismissed, he is awarded the sum of \$2,209.50 for outstanding pay. [redacted] are fined a penalty of \$2,500 for contravention of Section 6.
44. The parties to this Hearing are reminded that the Determination and Award of this Tribunal is binding.
45. Any party aggrieved may appeal to the Supreme Court of Bermuda on a point of law within 21 days of the date of this decision.

Dated this 18th day of August 2026

C. Rothwell

Craig Rothwell
Tribunal Chair

Derrick Burgess

Derrick Burgess
Tribunal Member

Dawn Eversley

Dawn Eversley
Tribunal Member

Schedule 1

Week	Scheduled Hours	Extra Hours over 45 hours
01 Nov 2021 - 07 Nov 2021	47	2
08 Nov 2021 - 14 Nov 2021	47	2
15 Nov 2021 - 21 Nov 2021	47	2
22 Nov 2021 - 28 Nov 2021	45	
29 Nov 2021 - 05 Dec 2021	46	1
06 Dec 2021 - 12 Dec 2021	47	2
13 Dec 2021 - 19 Dec 2021	45	
20 Dec 2021 - 26 Dec 2021	35	
27 Dec 2021 - 02 Jan 2022	46	1
03 Jan 2022 - 09 Jan 2022	48	3
10 Jan 2022 - 16 Jan 2022	47	2
17 Jan 2022 - 23 Jan 2022	47	2
24 Jan 2022 - 30 Jan 2022	47	2
31 Jan 2022 - 06 Feb 2022	47	2
07 Feb 2022 - 13 Feb 2022	46	1
14 Feb 2022 - 20 Feb 2022	46	1
21 Feb 2022 - 27 Feb 2022	47	2
28 Feb 2022 - 06 Mar 2022	46	1
07 Mar 2022 - 13 Mar 2022	48	3
14 Mar 2022 - 20 Mar 2022	47	2
21 Mar 2022 - 27 Mar 2022	46	1
28 Mar 2022 - 03 Apr 2022	46.5	1.5
04 Apr 2022 - 10 Apr 2022	47	2
11 Apr 2022 - 17 Apr 2022	47	2
18 Apr 2022 - 24 Apr 2022	46	1
25 Apr 2022 - 01 May 2022	44	-1
02 May 2022 - 08 May 2022	47	2
09 May 2022 - 15 May 2022	48	3
16 May 2022 - 22 May 2022	47	2
23 May 2022 - 29 May 2022	46	1
30 May 2022 - 05 Jun 2022	47	2
06 Jun 2022 - 12 Jun 2022	47	2
13 Jun 2022 - 19 Jun 2022	47	2
20 Jun 2022 - 26 Jun 2022	48	3
27 Jun 2022 - 03 Jul 2022	46	1
04 Jul 2022 - 10 Jul 2022	23	
11 Jul 2022 - 17 Jul 2022	21	
18 Jul 2022 - 24 Jul 2022	47	2
25 Jul 2022 - 31 Jul 2022	49	4
01 Aug 2022 - 07 Aug 2022	46	1
08 Aug 2022 - 14 Aug 2022	48	3

15 Aug 2022 - 21 Aug 2022	48	3
22 Aug 2022 - 28 Aug 2022	48	3
29 Aug 2022 - 04 Sep 2022	47	2
05 Sep 2022 - 11 Sep 2022	47	2
12 Sep 2022 - 18 Sep 2022	46	1
19 Sep 2022 - 25 Sep 2022	46	1
26 Sep 2022 - 02 Oct 2022	47	2
03 Oct 2022 - 09 Oct 2022	47	2
10 Oct 2022 - 16 Oct 2022	47	2
17 Oct 2022 - 23 Oct 2022	47	2
24 Oct 2022 - 30 Oct 2022	48	3
31 Oct 2022 - 06 Nov 2022	46	1
07 Nov 2022 - 13 Nov 2022	47	2
14 Nov 2022 - 20 Nov 2022	46	1
21 Nov 2022 - 27 Nov 2022	48	3
28 Nov 2022 - 04 Dec 2022	46	1
05 Dec 2022 - 11 Dec 2022	48	3
12 Dec 2022 - 18 Dec 2022	43	
19 Dec 2022 - 25 Dec 2022	38	
26 Dec 2022 - 01 Jan 2023	37	
02 Jan 2023 - 08 Jan 2023	54	
09 Jan 2023 - 15 Jan 2023	45	
16 Jan 2023 - 22 Jan 2023	45	
23 Jan 2023 - 29 Jan 2023	45	
30 Jan 2023 - 05 Feb 2023	45	
06 Feb 2023 - 12 Feb 2023	45	
13 Feb 2023 - 19 Feb 2023	45	
20 Feb 2023 - 26 Feb 2023	45	
27 Feb 2023 - 05 Mar 2023	45	
06 Mar 2023 - 12 Mar 2023	45	
13 Mar 2023 - 19 Mar 2023	45	
20 Mar 2023 - 26 Mar 2023	45	
27 Mar 2023 - 02 Apr 2023	45	
03 Apr 2023 - 09 Apr 2023	45	
10 Apr 2023 - 16 Apr 2023	45	
17 Apr 2023 - 23 Apr 2023	45	
24 Apr 2023 - 30 Apr 2023	45	
01 May 2023 - 07 May 2023	45	
08 May 2023 - 14 May 2023	45	
15 May 2023 - 21 May 2023	45	
22 May 2023 - 28 May 2023	45	
29 May 2023 - 04 Jun 2023	45	
05 Jun 2023 - 11 Jun 2023	45	
12 Jun 2023 - 18 Jun 2023	45	
19 Jun 2023 - 25 Jun 2023	45	
26 Jun 2023 - 02 Jul 2023	45	
03 Jul 2023 - 09 Jul 2023	45	
10 Jul 2023 - 16 Jul 2023	45	

17 Jul 2023 - 23 Jul 2023	45	
24 Jul 2023 - 30 Jul 2023	45	
31 Jul 2023 - 06 Aug 2023	45	
07 Aug 2023 - 13 Aug 2023	45	
14 Aug 2023 - 20 Aug 2023	45	
21 Aug 2023 - 27 Aug 2023	45	
28 Aug 2023 - 03 Sep 2023	45	
04 Sep 2023 - 10 Sep 2023	45	
11 Sep 2023 - 17 Sep 2023	45	
18 Sep 2023 - 24 Sep 2023	45	
25 Sep 2023 - 01 Oct 2023	45	
02 Oct 2023 - 08 Oct 2023	45	
09 Oct 2023 - 15 Oct 2023	45	
16 Oct 2023 - 22 Oct 2023	45	
23 Oct 2023 - 29 Oct 2023	45	
30 Oct 2023 - 05 Nov 2023	45	
06 Nov 2023 - 12 Nov 2023	45	
13 Nov 2023 - 19 Nov 2023	45	
20 Nov 2023 - 26 Nov 2023	45	
27 Nov 2023 - 03 Dec 2023	45	
04 Dec 2023 - 10 Dec 2023	36	
11 Dec 2023 - 17 Dec 2023	27	
18 Dec 2023 - 24 Dec 2023	44	
25 Dec 2023 - 31 Dec 2023	40	
01 Jan 2024 - 07 Jan 2024	45	
08 Jan 2024 - 14 Jan 2024	45	
15 Jan 2024 - 21 Jan 2024	45	
22 Jan 2024 - 28 Jan 2024	45	
29 Jan 2024 - 04 Feb 2024	45	
05 Feb 2024 - 11 Feb 2024	45	
12 Feb 2024 - 18 Feb 2024	45	
Total		97.5