

IN THE MATTER OF THE EMPLOYMENT ACT 2000 (the "Act")
and IN THE MATTER OF an employment complaint by [REDACTED] against
[REDACTED]

Tribunal Members:

Keren Lomas, Chair

Michael Frith, Deputy Chair

Robert Horton, Member

Introduction

[REDACTED] ("the Complainant") asserts:

- (1) That she was not paid for hours worked during the period commencing with the week ending Friday, 2 October, 2020 through to the week ending Friday, 19 February 2021, such non-payment amounting to an unauthorized deduction as contemplated by s.8(2) of the Act; and**
- (2) That she left her employment on account of the hostile environment allegedly created by the treatment of her by the Manager of the business, [REDACTED], and her co-worker [REDACTED], such treatment amounting to constructive dismissal as contemplated by s.29 of the Act.**

The Complainant appeared and was supported at the hearing by [REDACTED].

Mr. [REDACTED] did not appear to give evidence as it is reported that he was [REDACTED] and was not well enough to appear before the Tribunal.

[REDACTED], owner of [REDACTED] appeared as Respondent to the Complaint.

Unauthorized Deduction

On the matter of hours worked for which she alleges she was not paid pursuant to her oral contract of employment, the Complainant produced a tabulation of estimated hours worked for each week of the period in question, her hourly rate of

pay, the amount that she actually received by way of pay and the amount unpaid. The relevant period commences with the week ending Friday, 2 October, 2020 through to the week ending Friday, 19 February 2021, a total of 22 weeks.

The Complainant admitted that she did not keep any record of hours worked or pay received to support her figures presented to the Tribunal and based her estimates on her recollection of the period in question. The Respondent similarly failed to produce any office record to support the amount paid to the Complainant each week or the hours worked in each week and based his estimates on his recollection and the information given to him by [REDACTED]

The Tribunal assessed the oral evidence of the parties with regard to the Complainant's work hours and amounts paid.

Evidence was adduced from both parties, including in relation to the increased requirements of the business as a result of the Covid- 19 pandemic and the increased hours required of the Complainant as a consequence. Based on that evidence, the Tribunal concluded that for the period in question, the Complainant worked an average of 6 hours a day (30 hours per week). It was acknowledged that her hours varied slightly from day to day, but that her work generally started at approximately 10:00 a.m. and concluded at approximately 4:00 p.m. The one exception to this related to the week ending 12 February, 2021 during which the Complainant said (and the Respondent agreed) that she was unable to work for one day that week. In respect of that week, the Tribunal assessed her work hours at 24.

On the evidence presented, the Tribunal concluded that the Complainant's rate of pay was \$20 per hour.

Based on the foregoing, the Tribunal concluded that the Complainant had worked a total of 654 hours for the period in question (i.e. 21 weeks of 30 hours each and 1 week of 24 hours). At a rate of pay of \$20 per hour, the Tribunal concluded that the Complainant was therefore entitled to total pay in the sum of \$13,080.00 for the period in question.

The Tribunal further concluded that the Complainant had been paid the total sum of \$5,280.00 for the period in question, leaving a balance unpaid to her of \$7,800.00.

The Tribunal concluded that the total unpaid sum of \$7,800 amounted to an unlawful deduction within the meaning of s.8(2) of the Act.

Constructive Dismissal

The Complainant alleged that a "hostile environment" had been created by [REDACTED] and [REDACTED] during a period of absence abroad by the Respondent (from [REDACTED] to [REDACTED]). The behaviours complained of included [REDACTED] unreasonable claims of lateness on the part of the Complainant, the Complainant's use of her personal phone and [REDACTED] and [REDACTED] rudeness towards the Complainant and her family.

The Complainant asserted that she made the Respondent aware of her concerns in this regard upon his return to Bermuda. The Respondent asserted that he had no recollection of such a discussion.

On the evidence presented, the Tribunal was not satisfied that the allegation of a hostile work environment was sufficient to warrant a conclusion by the Complainant that it was unreasonable for her to continue her employment. Further, the Tribunal concluded that the Complainant did not clearly make her concerns known to the Respondent and that he was given no opportunity to address her concerns prior to her determination to quit her job which she did on 19 February, 2021.

Section 29 of the Act, defining "constructive dismissal", provides that:

- (1) 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.*
- (2) An employee who terminates his contract pursuant to subsection (1) shall be deemed to have been unfairly dismissed for the purpose of the Act.*

The Tribunal is not satisfied that the circumstances described by the Complainant were sufficient to make it unreasonable for her to continue the employment relationship. As such, the Tribunal finds that the Complainant was not constructively dismissed.

Order

The Tribunal hereby orders that the Respondent, [REDACTED], trading as [REDACTED], shall pay to the Complainant, [REDACTED],

the sum of \$7,800 by way of compensation for unauthorized deduction made from the Complainant's pay. The Tribunal further orders that the Respondent make such payment to the Complainant within 30 days of the date of this Ruling.

DATED this 3rd day of September, 2021

SIGNED: Keren Lomas
Keren Lomas, Chair

SIGNED: Michael Frith
Michael Frith, Deputy Chair

SIGNED: Robert Horton
Robert Horton, Member