

**IN THE MATTER OF A COMPLAINT UNDER THE EMPLOYMENT ACT 2000 BEFORE THE
EMPLOYMENT & LABOUR RELATIONS TRIBUNAL (the 'Tribunal')**

BETWEEN:

Miss Empress Somersall

Complainant

AND

Respondent

DECISION

Date of Complaint: November 29th 2022
Date Investigation Completed: April 12th 2023
Date of Referral: May 19th 2023
Date of the Hearing: 28th September 2023

Tribunal Panel Members: Ms. Kelly Francis, Chairman
Mr. Peter Aldrich, Deputy Chairman
Ms. Valerie Young, Tribunal Member

Present: Miss Empress Somersall, Complainant
| Representatives, Respondent

The Complaint filed under The Employment Act 2000 (The 'Act') pursuant to Section 37 (4) of the Act.

Background

Further to the hearing held on September 28th 2023 (the "Hearing") between Miss Empress Somersall (the "Complainant") and a (the "Respondent").

The Complainant is seeking compensation for unpaid wages; unfair dismissal and pay in lieu of notice pursuant to Sections 8, 20, 21, 28 and 39 of the Employment Act 2000.

The Hearing

While the Respondent presented the Tribunal with evidence and witnesses, the information provided was not germane to the claims presented by the Complainant and did not support the Respondents case. The Tribunal was not able to accept certain witness statements which appeared to focus on aspects of the Complainant's character rather than presenting the case that Company policy had been followed. The Complainant did not present witnesses, but did provide supporting evidence to show that there was both a stated expectation and a reasonable expectation for her to have received written notice or, pay in lieu of notice.

Deliberations

1. The Tribunal have heard the representations from both Parties and considered reasons given by the Complainant to support the conditions of the Employment Act 2000 as outlined below.

a) Notice Periods states: *"A contract of employment may be terminated in accordance with this Part by the employer on giving the following minimum periods of notice in writing ("the statutory notice periods")—*

- one week, where the employee is paid each week;*
- two weeks, where the employee is paid every two weeks;*
- one month, in any other case.*

The above shall not apply "where periods of notice are regulated by contract, by collective agreement or otherwise by agreement between the employer and employee;" (Section 20.2.c)

b) Pay in Lieu of Notice states: *"In lieu of providing notice of termination of employment in accordance with Section 20, an employer may, at his discretion, pay an employee a sum equal to the wages and other remuneration and confer on him all other benefits that would have been due up to the expiry of any required period of notice."*

2. The Tribunal was not persuaded by the Respondent that despite the Complainant receiving a Statement of Employment which stated two weeks written notice would be provided, that notice need not be given as it was understood by the Complainant that her employment would cease at on a particular date.

3. The Tribunal was persuaded that the date employment was due to terminate was never provided in writing, nor directly stated to the Complainant by the Respondent.
4. The Tribunal was not persuaded that the Complainant was only employed to work with one airline carrier and employment would automatically cease when that particular carrier ceased operating.
5. Based on evidence provided, the Tribunal was persuaded that the Complainant was scheduled and did work for other airlines during the course of her employment. Furthermore, the Complainant was scheduled to work for other airlines past the date, when the primary airline ceased their seasonal operations.
6. The Tribunal was persuaded that the Complainant had a reasonable expectation that her employment was to continue through the end of September 2022 as seasonal flights were still in operation.
7. The Tribunal was not persuaded that the Complainant held separate employment contracts with each airline and is therefore due compensation for unfair dismissal from each.
8. The Tribunal was not persuaded that the Complainant was unfairly dismissed as despite the absence of a specific termination date, the Statement of Employment did indicate that the employment was for a seasonal period and not designed to be ongoing.
9. The Tribunal was not persuaded that the HR practices utilized by the Respondents are in accordance with the Employment Act.

Determination and Order

The Tribunal awards the Complainant the following:

- 1) Two weeks' salary totaling \$1,070.40 less applicable deductions to compensate the complainant for not receiving two weeks' written notice in accordance with their employment contract. Calculation is based on an hourly rate of \$17.84 and a 30-hour work week based on a review of scheduling sheets.
- 2) Payment in full for September 9th and 13th 2022 totaling \$178.40 less applicable deductions which are the two days the Complainant arrived for work and was sent home. Calculation is based on an hourly rate of \$17.84 and a 5-hour workday based on a review of scheduling sheets.
- 3) Payment for 1 public holiday totaling \$89.20. Calculation is based on an hourly rate of \$17.84 and a 5-hour workday based on a review of scheduling sheets. A review of the Respondents pay slips did not clearly indicate that she received payment for this day.
- 4) The combined sum of \$1,338.00 less applicable deductions shall be paid to the Complainant no later than **Friday, November 24th 2023**.

- 5) On the same date, the Respondents shall provide the Complainant with a Certificate of Termination which indicates Eligibility for Rehire.
- 6) Effective immediately and for a period of two years, the Respondents refrain from providing information to any prospective employer which is designed to discourage them from employing the Complainant.

With the provision of Section 44 M, the Tribunal fines the Respondent the following:

- 1) \$5,000.00 for failure to adhere to the practices set forth in the Employment Act with respect to the Complainants right to complete documentation; full disclosure of all employment terms and conditions and, failure to honor the terms outlined in the Statement of Employment.

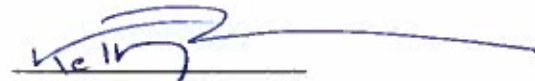
It should be noted that in the absence of any supporting documentation from the Respondent confirming work week or rest periods, the Tribunal has based its calculations upon a review of scheduling sheets which appear to indicate the Complainant worked a five hour day with no rest period.

The Parties to this hearing are reminded that the Determination and Order of this Tribunal is binding. Any party aggrieved may however appeal to the Supreme Court of Bermuda on a point of law.

DECISION

Dated this 26th day of October 2023

Ms. Kelly Francis, Chairman



Mr. Peter Aldrich, Deputy Chairman



Ms. Valerie Young, Tribunal member

