

IN THE MATTER OF A DISPUTE UNDER THE EMPLOYMENT ACT 2000
BEFORE THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL

BETWEEN

ARDEEN MONTEITH WILLIAMS

Complainant

AND

QUINTON BUTTERFIELD

[Trading as CENTRAL DIAGNOSTICS LABORATORY]

Respondent

DECISION

Date of Hearing: 21st June 2024

Terms of Reference: *To determine whether the Complainant is entitled to certain sums by way of pay in lieu of notice, vacation pay and severance pay on redundancy.*

TRIBUNAL MEMBERS

Keren Lomas, Chairman

Judith-Hall Bean, Deputy Chairman

Robert K Horton, Member

REPRESENTATION

Complainant: In person

Respondent: In person and by his next friend, Mr. Randy Masters

INTRODUCTION

Neither party filed a sworn statement. Therefore, each party in evidence swore to the truth of the contents of the documents which each had filed in support of his/her claim and response.

Undisputed Background Facts

1. The Complainant was well qualified, both academically and by way of experience, to assume the role of Chief Operating Officer of the Respondent's business, Central Diagnostics Laboratory (CDL). CDL had failed to receive accreditation from a recognized accreditation authority abroad desirable for diagnostics laboratories operating in Bermuda.
2. During the Complainant's employment with CDL from 8th December 2020 until she was laid off by letter dated 19th April 2023, signed by the Respondent and effective 1st May 2023, CDL still had not achieved accreditation.
3. The letter dated 19th April 2023 under the hand of the Respondent, Mr. Quinton Butterfield, clearly stated that if the lay-off continued for a continuous period of 4 months, the Complainant would be deemed to have

been terminated by reason of redundancy pursuant to provisions of section 30 of the Employment Act 2000 (“the Act”). That period expired without the Complainant being recalled for service.

4. There was no Statement of Employment to conform with requirements of section 6 of the Act, but there was a work permit application dated 9th April 2020 submitted to the Ministry of Economy and Labour signed by both parties setting out basic terms of employment. By this document, the parties agreed to a 90-day notice period terminating the employment.
5. The Complainant did not receive 90 days’ notice or pay in lieu of notice on or after 19th April 2023 and she claims 90 days’ pay in lieu of notice, that is, 12 weeks’ net salary of \$2500 a week, being a net sum of \$30,000. In addition, the Complainant claims 4 weeks’ net salary pursuant to section 23(2)(a) of the Act, plus 2 days’ vacation pay of \$1000. There was no dispute concerning the manner in which these figures were computed.

Respondent’s Contention

6. The main contention of the Respondent was that the Complainant by her own conduct had terminated her employment at CDL. The Respondent agreed that the Complainant was owed \$1000 in vacation pay, but argued that this amount should be set off against the sum of \$2500, the net salary that she had received for the last week of April 2023.
7. Additionally, the Respondent contended that the Tribunal should take into consideration the authorized deductions paid to the relevant authorities on behalf of the Complainant for the month of May 2023.
8. On this last point, the Tribunal ordered the Respondent to produce satisfactory documentary evidence of such payments within 14 days of the date of the Hearing and that, in default, the Tribunal would be unable to take such matters into account.

9. The Respondent produced in that 14-day period documentary proof that the Complainant's pension payments had been brought up to date to the end of April 2024.

FINDINGS

10. The Tribunal, for the reasons that follow, does not accept the Respondent's main contention that the Complainant had by her conduct terminated her employment with the Respondent.
11. It was accepted by the parties that on 16th February 2023, the Respondent had requested the Complainant to join a meeting that he had arranged with two prospective buyers of his business. The Tribunal accepts that it was prudent to include the Complainant in these negotiations as only she and the Respondent were capable of operating the diagnostic machinery at CDL.
12. The Tribunal accepts the Complainant's evidence that she did not reveal any information to the Respondent's business broker additional to the information that the Respondent himself had given to the broker in the meeting of 16th February 2023.
13. The Tribunal does not accept that the Complainant's signature to the business broker's terms of business had the effect of terminating the Complainant's employment contract with the Respondent.
14. The Tribunal is of the view that in all the circumstances, it was prudent of the Complainant to pursue other employment opportunities in the full knowledge that the Respondent was seeking a buyer for his business and that the business had suffered such setbacks to its operation that the Respondent was offering his business for sale.
15. The Tribunal accepts the Complainant's evidence that she did not seek employment opportunities with either of the doctors who attended the

13. The Tribunal does not accept that the Complainant's signature to the business broker's terms of business had the effect of terminating the Complainant's employment contract with the Respondent.
14. The Tribunal is of the view that in all the circumstances, it was prudent of the Complainant to pursue other employment opportunities in the full knowledge that the Respondent was seeking a buyer for his business and that the business had suffered such setbacks to its operation that the Respondent was offering his business for sale.
15. The Tribunal accepts the Complainant's evidence that she did not seek employment opportunities with either of the doctors who attended the meeting of 16th February 2023 until the negotiations for the purchase of the Respondent's business had failed.
16. The Tribunal accepts that the Complainant, being prudent and unemployed, was seeking other employment opportunities during the lay-off period with the permission of the Department of Immigration.
17. The Tribunal views as irrelevant the Respondent's reluctance to enter into negotiations for the sale of his business to persons that included the Complainant following the filing of the Complainant's complaint with the Department of Labour.
18. The Tribunal accepts that the Complainant commenced work with Bermuda Diagnostics on 2nd April 2024. The Tribunal notes that the principal of Bermuda Diagnostics is Dr. Sophie Matthews, one of the doctors who attended the meeting with the Respondent on 16th February 2023.

CONCLUSION AND DECISION

19. The Tribunal, having ordered the Respondent to produce documentary evidence of authorized deductions allegedly made by CDL on behalf of the Complainant during the month of May 2023, and the Respondent having failed to do so, the Tribunal makes the following orders:

- (i) The Respondent shall pay to the Complainant the sum of \$41,000 as calculated in paragraph 5 above; and
- (ii) The Respondent shall account to the Accountant General for the payroll tax payable in respect of such sum.


20. Either party that is aggrieved by this decision has the right to appeal to the Supreme Court on a point of law only within 21 days after receipt of notification of this award.

Dated this 8th of July 2024



Keren Lomas

Chairman



Judith Hall-Bean

Deputy Chairman



Robert K. Horton

Member

