

**IN THE MATTER OF A COMPLAINT UNDER THE EMPLOYMENT ACT 2000 BEFORE THE EMPLOYMENT & LABOUR RELATIONS TRIBUNAL**

**BETWEEN:**

**Complainant**

**AND**

**Respondent**

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**DECISION**

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**A. THE PARTIES**

1. The Complainant is Ms. \_\_\_\_\_ and is the employee in these proceedings. Ms. \_\_\_\_\_ was unrepresented.
2. The Respondent is \_\_\_\_\_ and is the employer in these proceedings. The Employer is \_\_\_\_\_ and he was unrepresented.

**B. PROCEDURAL MATTERS**

3. The Complainant filed her complaint with the Labour Relations Office on 16<sup>th</sup> November 2023 and the matter was referred to the Employment and Labour Relations Tribunal on 30<sup>th</sup> October 2024.
4. A directions hearing was convened on the 24<sup>th</sup> of January, 2025 and the directions order issued on the 27<sup>th</sup> of January, 2025. Due to scheduling and availability of the Respondent, and illness of the Tribunal Chair, the substantive hearing was set for 9<sup>th</sup> May, 2025.
5. However, at the convening of the substantive hearing, during the reading of opening procedures, it was discovered that the Complainant had arrived to the hearing without copies of neither her own or the Respondent's bundle.
6. When questioned as to why, as the Complainant, she would arrive unprepared to support her claim, the Complainant suggested that she was informed by the Tribunal Administrator that there

was no need to bring copies. Instead, the Complainant produced a cell phone and miniature notepad – stating to the Tribunal that she would be able to proceed with those two resources.

7. To ensure the Complainant received a fair hearing, the procedure was recessed in order for the Director of Labour Relations, (in the vacationing absence of the Tribunal Administrator), to copy a complete file for the Complainant's benefit. This action caused the hearing to commence 45 minutes later.
8. The Complainant confirmed that the nature of her complaint is for unauthorized deductions – falling under Section 8 of the Employment Act and for Unfair Dismissal – falling under Section 28 of the same Act.
9. The Complainant is seeking a remedy of: three (3) weeks wages for unfair dismissal and, \$4000.00 for unauthorised deductions and unpaid wages.

#### **C. AGREED FACTS**

8. The Complainant commenced employment with [redacted] on 15<sup>th</sup> November, 2022, on a year-to-year contract. Her last day of employment was 1<sup>st</sup>, November, 2023.
9. The position held by the Complainant was as a Phlebotomist and Medical Receptionist.
10. Evidence provided by the parties confirmed that upon commencing employment, the Complainant received the following employment documents:
  - a. Employment Contract – signed by the Complainant
  - b. New Employee Checklist
  - c. [redacted] Handbook
  - d. Standard Operating Procedures for Venipuncture – signed by the Complainant
  - e. Standard Operating Procedures for sample collection, labeling, handling and transport – signed by the Complainant
11. Upon termination of the employment contract, the Complainant was provided the following documents:
  - a. Notice of termination of employment
  - b. A letter stating the reasons for termination
  - c. A departure letter
12. The Complainant's work hours were confirmed and agreed as 7:30AM to 5:15PM, Monday through Friday.
13. Lunch hour periods were: 12:15PM to 1:15PM, Mondays, Tuesdays and Thursdays, and 12:00 Noon to 2:00PM on Wednesdays and Fridays.

14. Vacation allotment was ten (10) paid days. To be requested four (4) weeks in advance, in writing. All Bermuda Holidays were paid, and US Federal Holidays (because of office closure) were taken, but unpaid.

15. Sick Leave entitlement was eight (8) paid days and ten (10) unpaid sick days.

#### **Positions of the Parties**

16. The Complainant's position is that she was unfairly dismissed because she questioned her job duties and wages. The Complainant's questioning of her duties and wages was a result of being required to perform relevant services (phlebotomy and sample transporting) due to the Respondent contracting with (in addition to those companies already in the Complainant's rotation), shortly after the Complainant commenced her employment.

17. The Respondent's position is that the Complainant had significant performance issues with mislabeling blood draws/samples – with one that resulted in a patient's sample being incorrectly labelled, leading to processing the sample under an incorrect patient profile. This coupled with the Complainant exceeding the amount of paid and unpaid sick days which were afforded to her in her contract of employment. While there were other employment issues with the Complainant – such as persistently clocking in earlier than her start time and being inconsistent with her return times from lunch, the two most egregious issues are underlined above.

18. And, because the Complainant was on a year-to-year contract, with the terms for termination of the contract clearly outlined – stating a) "The employer and employee agree to a contract renewal or termination notice of 60 days" and, b) the employer effecting the terms associated with exceeding (total) sick leave and reserving the right to terminate the contract, that the Respondent exercised his right to terminate the Complainant's contract of employment.

#### **Testimony of the Respondent**

19. In the Respondent's opening testimony, he stated that are had been in operation for approximately 20 years and he had 15 employees.

20. The Respondent stated that a professional resource set up the Laboratory and that it was examined regularly to maintain the Laboratory's accreditation. He emphasized that the Laboratory could not tolerate sampling or labeling errors, and that the entirety of the process required accuracy and efficiency. Further, that phlebotomists are required to work their standard hours and accurately label patient samples at all times.

21. The Respondent informed the Tribunal that regular Laboratory staff meetings had been held at which, *inter alia*, complaints about staff behaviour and performance whilst on duty had been addressed. In relation to the Complainant's performance – the Respondent stated that he had

received complaints from a newly contracted client and a long-standing client, which could have amounted to endangering both businesses.

22. With reference to the issue of the incorrect patient sampling, the Respondent spoke at length about the importance of accuracy in patient care and the fact that the practice needed to be “accredited” in order to maintain its license and insurance. He said that 80% of doctor’s decisions are based on lab results, and it is imperative that the patient information is recorded correctly. He further stated that incorrect patient information could cause the wrong treatment to be applied to the wrong patient, which could present life threatening conditions to both patients. The Respondent reiterated the potential damage to the business’ reputation when errors like mislabeling occur; undermining customer confidence in the business’ medical practice.

23. While the Office Manager/Lab Technical Consultant, \_\_\_\_\_ would testify to the main issue at hand – that of the instances of mislabeling drawing/sampling errors by the Complainant, the Respondent wished the Tribunal to know that when the issue of the 10<sup>th</sup> July, 2023 mislabeled blood sample had been brought to the Complainant’s attention, that she had been dismissive of the accusation that she had confused the blood sample of the patient (who filed) the initial complaint. Therefore, a general meeting was held on 24<sup>th</sup> July, 2023 with all staff to ensure that all staff members were on the same page as it related to testing processes.

24. The Respondent addressed the working hours of laboratory staff because the Complainant’s time cards and claims of unauthorized deductions were a significant portion of her complaint. In providing an overview of the building used by \_\_\_\_\_, the Respondent stated that access was granted to patients, clients and employees to use the gym facilities; that all employees had keys to access the building, enabling them to use the facilities before and after working-hours – but this did not mean that employees could clock in before their start time of 7:30AM.

25. Accordingly, his staff would come in early to prepare the facilities for patients’ use. And, notwithstanding clocking in early if there were “fasting patients”, their appointments would be noted and agreed before-hand with the receptionist and the technicians; and upon arrival, patients would sign-in. Ultimately, the Office Manager would be made aware of patient appointments and correlating start times of employees.

26. To directly address the Complainant’s charge that she was not being paid when clocking in before the authorized start time of 7:30AM, the Respondent emphasized that: if staff do not work their standard hours, they would not be paid.

27. In concluding his testimony, the Respondent emphasized the importance of maintaining his laboratory’s accreditation. To ensure that result, any mistake or error made by an employee had to be immediately addressed and reported to the Accrediting Body assessors.

28. In answer to a question by the Tribunal regarding the frequency of staff meetings, the Respondent stated that there had been numerous staff meetings during which staff performance had been discussed, and that the Complainant had asked to be allowed to present evidence about her own performance during these meetings.

29. The Employer made references to a witness who had agreed to present a statement for each party. The Tribunal Chairman informed the Respondent that the witness' statement was an issue because the statements were contradictory and had not been properly notarized. That further reference to the particular witness and his statements would be addressed if the witness appeared, to be questioned by either party. Ultimately, the witness did not attend the hearing.

### **Cross Examination of the Respondent**

30. The Complainant, referring to herself as a "liability", asked the Respondent, as such, why would she be sent to draw blood from                      s patients?

31. The Respondent stated that the Complainant was not considered to be a liability when first hired. That senior technicians had provided her with training and support; and as the Employer, he was open to assisting the Complainant if she wished to further her career as a Phlebotomist. However, when issues arose, he was required to bring those to her attention; and that he did so within the context of accreditation standards. Further, that he required managers to bring to his attention any issue with his lab staff or any phlebotomist.

32. The Complainant referenced her job title and duties, as she insisted that even though her job description described her duties as a phlebotomist and a receptionist, she stressed that she had not performed reception duties. As such, the Complainant asked the Respondent to clarify what he believed her role to be.

33. In reply, the Respondent confirmed that the Complainant's main duties were as a phlebotomist and samples carrier/transporter. That main duties for phlebotomists would take place over the morning, and care in the afternoon would be for drawing blood for emergency/on-the-spot patients. Referencing the Complainant's receptionist duties, the Respondent explained that such duties mainly involved the completion of paperwork.

**Witness for the Respondent:**                      , Accounts Manager

34. Ms.                      testimony concentrated on refuting the Complainant's claim that she was not being paid for hours worked, and supporting the Respondent's claim that the Complainant had exceeded the amount of paid and unpaid sick leave within the one-year contract time frame. She would further testify to when blood draws were scheduled and how she managed the timecards to properly administrate the Complainant's payroll; in particular how she communicated with the Complainant to

seek clarity on her often early clock-ins, her inconsistent lunch periods, and dealing with the matter-at hand – that of the patient’s mislabeled blood sample.

35. Evidence of WhatsApp audio clips were presented to show the inaccuracy of the Complainant’s clock-in times including when she was required to be present for blood draws; pick-up and transport and discrepancies with lunch breaks (and not returning to work) after lunch breaks. Ms. [redacted]’s position is that the evidence proved that the Complainant was increasingly clocking in earlier than her start time of 7:30AM, stating that first blood draws were frequently scheduled for 7:45AM. A 10-page Time Card Report called Timetrax provided a sampling of the Complainant’s early clock-in times as: 6:56AM; 7:02AM, 6:48AM, 6:21AM as an example.

36. The Timetrax Report and WhatsApp messages between the witness and the Complainant, and emails from the Office Manager supported the questioning of the Complainant when she clocked in after lunch at unusual times, or if/why the Complainant had not returned to work after her lunch break.

37. The Tribunal noted that on the Timetrax Report for the Complainant, submitted by the Respondent, that under the heading: Punch Info, that the term “deleted punch” appeared numerous times, and asked the witness to explain why.

38. The witness explained that each time the term “deleted punch” appeared, it correlated with early punch-in times by the Complainant. And because the Complainant had been told on numerous occasions to not punch-in before her start time of 7:30AM, that as the Accounts Manager, she had the authority to manually override the punches and input 7:30AM as the start time. This manual override was keynoted with the term “deleted punch”.

39. The witness testified that she was asked to attend a meeting held on 1st September, 2023, with the Office Manager, [redacted] and the Complainant. The meeting was to provide the Complainant with 60 days’ notice that her employment would be terminated, and to further instruct her to desist from clocking in before her contracted start time, because there was no reason for her to be in the laboratory that early, as no work was being performed at those times.

40. In moving the witness to her account of the issue regarding the Complainant’s handling of an incorrect blood draw/labelling and patient complaint, she confirmed that she had been contacted by the patient on 7th August, 2023 because the patient’s insurance company had received paperwork to process a claim for bloodwork (which had not been drawn for this patient rather, drawn for the patient’s mother). The witness confirmed that the initials on the requisition that had been submitted to be processed by the insurance company, were those belonging to the Complainant,

41. Within the context of the blood draw for the patient, the witness testified that (because no blood had been drawn from the patient), an appointment had to be rescheduled for another attempt. The patient stressed to the witness that she did not want the Complainant to handle her procedure. As such, another Technician was called to draw the patient’s blood.

**Cross Examination of [REDACTED] – Accounts Manager**

42. While the Complainant made reference to the meeting held on 1st September, 2023 in which she was instructed to not punch in before her start time of 7:30AM, she only sought clarification of why the payroll records showed “deleted punch” – asking if (it correlated) to when she punched in before 7:30AM, with her intonation reflecting her belief that she was not being paid for hours worked.

43. The witness’ only reply was that the Lab doors do not open until 7:45AM.

44. Regarding the patient complaint that had been received by the Respondent, the Complainant asked whether (both patients – mother and daughter) had been asked to write a complaint against her?

45. The witness replied “No”. Once the patient called to query the insurance claim and the events surrounding both patients’ blood draws, the witness asked the patient to put her version of the events in writing to the laboratory manager.

46. The Complainant did not question nor query the evidence submitted by the Respondent regarding the exceeded amount of her paid and unpaid sick leave.

**Witness for the Respondent - [REDACTED], Office Manager and Technical Consultant**

47. The witness was asked to provide her qualifications and experience for the role of Office Manager and Technical Consultant. She replied that she commenced employment with [REDACTED] in March of 2015. She was a licensed and credentialed Phlebotomist, in Bermuda, since 2008.

48. The testimony of the witness focused on the charge against the Complainant – that of patient information mislabeling and sampling errors, and the Complainant’s claim that the Respondent made unauthorised deductions – including the non-payment of health insurance and pension contributions, and that she was not being paid for hours worked. The majority of the witness’ testimony focused on the underline issue.

49. The witness testified that the first observance of the Complainant’s mishandling of patient and sampling information being misidentified was on 3rd March, 2023. The issue: The samples and requisition for a patient just drawn by the Complainant was not the correct information for the patient (who had just left the lab). Having known the patient since approximately 2009, the witness noticed that the first and last names were correct but the birth date did not match.

50. The witness stated that the error was immediately brought to the attention of the Complainant, at which time she was shown the correct patient form – consequently, requiring the patient to be brought back the same day for a re-collection.

51. The second incident the witness addressed with the Complainant was as a result of a patient query on 7th August, 2023 and a subsequent written complaint to the Director of [REDACTED] by the same patient (on behalf of herself and her mother) dated 17th August, 2023. To both matters the witness testified: Previous testimony by [REDACTED] Accounts Manager regarding the query by the patient, was confirmed. The witness stated that she was contacted via email by Ms. [REDACTED] to share that the patient’s version of the non-blood draw incident had been shared with the Complainant, who stated that

the patient had in fact had her blood drawn, contrary to the patient's version that it was her mother who had completed her blood draw – not her, as the attempt to draw her blood on the day in question had been unsuccessful. The witness testified that the Technologist verified that the samples as submitted and labelled by the Complainant had then been tested based on the patient information on the label. The witness testified that once in office on the 23rd of August, 2025, a complete review of the patient's statement (complaint), patient results assigned to the (incorrect) patient, and patient records were reviewed. The witness stated that the results of the sample which had been collected on 10th July, 2023 did not clinically correlate with the labelled patient sample. However, the results were in line with previous results of the complaining patient's mother; and the overall review correlated with the patient's account of the totality of the events.

52. With the above account being the second incident in which the Complainant had mislabeled patient samples, the witness testified that all findings were presented to the Director of "

She stated, such errors could have grave consequences for a patient because physicians rely on lab tests to prescribe and adjust medications, order scans and prescribe treatment plans.

53. As the Office Manager, the witness culminated her testimony to include the issues surrounding the Complainant clocking in early; confirming that there was no justifiable reason for doing so. She confirmed that the matter had been brought to the Complainant's attention on 24th May, 2023, when she was instructed to clock in at her contracted start time. The instructions were followed up by sending a follow-up message to the Accounts Manager. Further testimony confirmed that by a review of the Complainant's use of sick leave allocation, that she had exceeded the eight (8) paid days for sick leave and the 10 unpaid days for the same – as outlined in the Complainant's contract of employment.

54. The Complainant was called by the witness to attend a meeting on 1st September, 2023; the Accounts Manager was in attendance. A review and the results of the 10th July, 2023 blood draw matter was communicated to the Complainant. The witness testified that the Complainant was informed that her recollection of the events (of which patient's blood had been drawn and labelled) did not match the complaining patient, nor did it match her clinical history. And, that such an error could have had grave consequences for the patient. It was also confirmed at the meeting that the Complainant had a total of 19 sick days.

55. On 1st September, 2023, in the meeting as outlined above, the Complainant was informed that her contract with would be terminated, and the company's obligation to provide 60 days' notice would commence. The Complainant was provided with a termination letter stipulating that her last day of work would be 1st November, 2023. The witness testified that the Complainant refused to sign the letter to acknowledge that she had received it. However, the attending witness did sign the letter to acknowledge that it had been offered to the Complainant. The witness stated that on 18th October, 2023, the Complainant was informed that her exit interview would be on her last working day of 1st November, 2023. The witness confirmed that on 1st November, 2023, the Complainant did not show for her last work day.

56. As to the Complainant's claim that she had not been enrolled with a pension provider, therefore the pension deductions were unauthorized, the witness presented evidence in the form of email



communications to the pension provider with the Complainant's enrollment forms attached, on 17th April, 14th August, and 11th October, all in 2023. The witness stated that on 14th August,

was contacted by the pension provider confirming that he had received the contributions on behalf of the Complainant, but not the enrollment form. Thus, the witness explained that she again attached an enrollment form and sent it to the pension provider on 14th October 2023. On 18th October, the pension provider acknowledged receipt and sought a corrected form for the Complainant. The corrected form was submitted on 20th October, 2023.

57. Regarding the Complainant's statement of claim in which she stated her belief: that she was terminated for questioning her pay after another contracted with the Respondent for phlebotomy services, the witness testified that the phlebotomy services did require the Complainant to perform twice-weekly blood draws, and on the remaining three days of the week – to also collect blood samples from the contracted. However, the additional services, while added to the Complainant's rotation, did not require the Complainant to clock in at earlier than 7:30AM – as those services commenced at 8:00AM. And, the Complainant was compensated for her time at the e. The witness testified that she explained the matter of how the Complainant was compensated for services performed at the as well as a third. Specifically, that provided phlebotomy and collection services, and when the Complainant performed the services as she was contracted to do, (after clocking in at ), she was compensated accordingly. And as the Complainant had also complained of using her personal transportation to carry out her duties, the witness testified and presented evidence to show when, and the amount of monies that the Complainant was provided for gasoline, when she requested it. However, upon a recommendation from the auditors of – on 4th April, 2023, the Complainant was provided with a mileage tracking sheet to more accurately account when she transported samples. The witness concluded by stating that thereafter, the Complainant never used the form.

58. Regarding the meeting held with the Complainant on 24th May 2023 to address the matter of her clocking in early – the witness was asked by the Tribunal if the Complainant challenged her when she inquired why she was clocking in so early in the morning, because the patient load did not require her to do so. She answered that the Complainant offered no reason for doing so, nor did she specifically challenge the statement regarding the patient load.

59. The Complainant did not cross-examine the witness, and the Tribunal reserved its right to do so if at the end of the Complainant's testimony, clarification was needed on any statement that the witness had testified to.

#### **Witness Testimony of the Complainant –**

60. The Complainant testified that she was hired as a Phlebotomist only; and to assist the lab technicians. She stated that she was then asked to be a carrier/transporter, and would do so using her own transportation.

61. After a period of approximately 3 or 4 months into her employment with , the Complainant stated that she was told she would have to transport samples from .. It was at that time

that she asked about her pay for the phlebotomy duties involving [redacted] as well as using her car to transport samples and, generally, how she was to complete her routes. Specifically, the Complainant asked if she was to draw blood for [redacted] patients as well as [redacted] patients, but confirmed that she only had to draw blood for [redacted]. However, when she was instructed to transport samples from [redacted] Office, that that is when she enquired about gas monies. But, the Complainant testified that whenever she did ask for monies for gas, that the Respondent did provide the monies "right away". The Complainant agreed that subsequently, she had been provided with a mileage form so that amounts provided for gas could be more consistent; that she started using the mileage form but, she grew tired of filling it out, so she stopped using it.

62. The Complainant, testified (and providing no date) that she was called by the Office Manager, .. to attend a meeting on 1st September, 2023. While she stated that she had to first take specimens to the hospital, she did eventually attend the meeting.

63. The Tribunal noted that the Complainant spoke about random topics she raised at the meeting on 1st September, 2023, including not being offered extra money for extra work, and not understanding her pay cheque from the time that she commenced working for [redacted] – for example: not understanding why deductions were being taken from her pay while she was still on probation, and that her pay decreased from when she began working with [redacted] to the time of her termination. However, the Complainant did not offer testimony to refute the reasons for her termination as told to her in the meeting on the 1st of September, 2023.

64. The Respondent did not wish to cross-examination the Complainant. However, the Tribunal sought the following clarifications on statements made by both parties; statements that could substantiate or undermine each person's claim and defense.

A. The Respondent clarified that when a new contract for phlebotomy and transport services was acquired, the Respondent called meetings to inform the [redacted] team.

B. It was confirmed by the Office Manager that when the Complainant was presented with the mileage form, she was asked if she understood how to use it. The Complainant did not confirm or deny the Respondent's statement, nor did she deny that she was told that if/when she did not use the mileage form, that she would not be compensated.

C. The Office Manager confirmed that the issue with the delay in benefits being applied after they were deducted from the Complainant, was the Pension Provider's policy (and as per the norm) that for the first 120 days of a new employee's employment, pension contributions are held in abeyance until successful probation (or regular fulltime employment) is confirmed.

D. The Office Manager also confirmed that (notwithstanding the IT issues that the pension provider was experiencing), when the matter of the deductions was raised by the Complainant, the recalculations and relevant data changes were made to correct the Complainant's record of deductions – during - not after the Complainant's employment had ended.

E. Referencing the first matter of mislabeling blood samples, the Complainant asked the Office Manager if, as a result of that incident, whether she was given a warning. The Office Manager replied that the Complainant was not provided with a written warning. Rather, the matter was immediately drawn to her attention, and then covered in a meeting held by the Respondent on 24<sup>th</sup> July, 2023.

F. The Tribunal sought to determine whether the Complainant was aware of the relevant documents that she had signed signifying that she had received training for blood drawing and for labelling samples. Also, whether the Complainant had attended staff meetings when the aforementioned matters had been raised by the Respondent. The Complainant confirmed that her signature did appear on the relevant training documents; the company handbook and benefit forms. The Complainant did not deny that matters involving incidents such as the mislabeling of samples had been raised in the staff meetings that she attended.

### **Closing Statements**

65. Due to the lateness of the Hearing, and with the Complainant stating that she had to return to work, as she had not planned for the one-day Hearing as instructed in the Directions Hearing, the Tribunal Chair asked for written Closing Statements to be provided on the 16th of May.

66. While the Respondent provided his written Closing Statement on the 12th of May, the Complainant's written Closing Statement was not provided until approximately 2-weeks after the submission date of the 16th of May, but was dated 9th May, 2025.

67. The Respondent's Closing Statement requested of the Tribunal to dismiss the Complainant's claim with no financial penalty against . The emphasis was placed on the Complainant's disregard of her senior managers' interventions and advice regarding what they deemed to be abuse of the time management (clocking in) system and failure to adhere to corrected actions discussed in staff meetings, even though meetings minutes were signed by the Complainant. Because phlebotomy protocols were not followed by the Complainant, not only was the business endangered, but so were the patients. Ultimately, the Complainant did not adhere to the conditions of her employment contract. The Respondent's position is that factual evidence was exhibited to support the termination of the Complainant's contract of employment; moreover, that proper notice and termination procedures were followed.

68. The Complainant's Closing Statement exerted that while employed for , her performance was satisfactory, and that she did not receive prior disciplinary action before her termination. The Complainant reiterated her belief that her termination was as a result of seeking a pay increase because she had been assigned to retrieve and transport samples from another doctor's office approximately 3 months after she commenced employment. The Complainant stated that she never received a departure letter, nor a handbook from , and nor was she provided with a reason for her termination. That while she received a termination letter, that it did not contain specified reasons (for the termination). While requesting a timecard report, the Complainant insisted that hours worked had been deleted from the records. The Complainant requested to be compensated for unpaid

wages and reinstatement. Note: The context provided by the Complainant for the loss of approximately \$4,000.00 in wages was unintelligible.

### **Deliberation**

69. The Complainant presented no evidence to support her specific claims for being owed \$4000.00 in wages for hours worked but not paid; and attributing the loss of wages to “deleted punches”; further, that she was being deducted for benefits that were not being applied. The rebuttal explanations to both claims was provided during the Respondent’s evidence-in-chief; that deleted and then corrected punches signified that the Complainant was continuing to clock in early, after she had been repeatedly instructed otherwise. When that occurred, the Accounts Manager would manually override those punches; otherwise the Complainant was paid for all hours worked. This matter was pointed out to the Complainant by the Accounts Manager in a communication to the Complainant in January 2023. To confirm the Complainant’s knowledge of her contracted hours of work, documented evidence of Laboratory Meeting Notes of 24th July, 2023, under agenda item: “Contracted Employment Hours”, was presented. The meeting minutes were signed by those in attendance, including the Complainant. The relevant minute stated: *“All lab staff are contracted from 7:30 to 5:15PM”. “All persons present were advised as such”.*

70. To rebut the Complainant’s claim of unauthorized deductions for benefits that were not being applied, the Tribunal’s deliberations focused on the explanation provided by the Respondent in clause 56. Also, the email evidence as presented by the Respondent, representing the actual processing of the Complainant’s pension enrollment forms and contributions, was irrefutable. And, while the Complainant did state in her closing testimony that she never understood her pay cheque, she did not deny that the Office Manager did explain the reasons for delays in the sign-up process and that the application of the benefits would apply once the Complainant officially became a full-time employee; i.e. once passed her new hire probation period. To support the Respondent’s testimony that the entire matter of the Complainant’s pension enrollment had been rectified, the Respondent presented correctly dated enrollment form.

71. As to the Complainant’s claim that she was only dismissed once she questioned her pay after the Respondent contracted with [redacted] - requiring blood draws at their facility twice a week, and collecting blood samples for transporting to [redacted] the remaining days of the week: during the Respondent’s evidence-in-chief, it was stated that when the contract with [redacted] commenced in January 2023, the Complainant was placed in a rotation to perform the services as noted above; it was explained to her by the Office Manager that she was compensated for phlebotomy services provided to [redacted] because she had already clocked-in at [redacted]. The Respondent emphasized that (other than phlebotomy services) pick up and drop off services were listed in the Complainant’s Job Description. During the Complainant’s cross-examination of the both the Respondent’s witnesses (the Office Manager and the Accounts Manager) – no questions of fact were asked. Rather, the Complainant seemed to rely on her feelings that she was terminated because she questioned her pay; and she wished for the Tribunal to reach this same conclusion.

72. To the main reason for the termination of the Complainant’s contract: that of the 10th July, 2023 patient sample being mislabeled with the wrong patient information – name and date of birth – which led

to the sample being processed and the results completed under the incorrect patient profile, the Respondent presented irrefutable evidence that its investigation (conducted as a result of the patient in questions complaint of 17th August 2023), confirmed that the Complainant had made the error. The Respondent's testimony included that the above incident was the second of such a nature; the first mislabeling incident of 3rd March 2023 was brought immediately to the attention of the Complainant. The Tribunal noted that during the Complainant's cross examination of all three witnesses, she did not provide an alternative account of either mislabeling event. And, when the Respondent presented documented evidence that the Complainant had been provided with Standard Operating Procedures for: Blood Collection by Venipuncture and Sample Collection, Labelling, Handling and Transport (both signed by the Complainant acknowledging the training), the Complainant did not dispute that she had been properly trained.

73. The Complainant did question whether a disciplinary procedure had been followed or applied to her following the mislabeling event of the 3rd of March, 2023. As noted in Clause 64, E, the Office Manager provided her reply. As a result, it was left to the Tribunal to determine if bringing the mislabeling incident to the Complainant's attention at the time that it occurred and directing her to address the incident (by bringing the patient back) fell within the context of progressive discipline. The Tribunal agreed that the level of discipline that should have been applied to such a serious situation (i.e. a written warning) was not applied. However, in considering the totality in which the Respondent addressed the matter of proper labeling, accreditation, and in the issuing of standard operating procedures during his staff meetings in which the Complainant was present and allowed to present her version of the particular event – to which she did not, the Tribunal determined that the Complainant's misconduct was at the crux of the matter of both mislabeling events. Further, that the Respondent exercised his right under the terms of the Complainant's year-to-year contract, to not renew it; to do so would continue to endanger his business and the lives patients of and its contracted clients.

74. The Respondent presented evidence confirming the total amount of sick days the Complainant had taken, with attention being drawn to the sick leave clause and termination clause in the Complainant's contract, that the Respondent relied on to terminate the Complainant's contract. Specifically, : reserved the right after 10 unpaid sick days – to terminate the Complainant's employment. In totality, at the time of termination – 10 months into the one-year contract, the Complainant had a total of 19 sick days; paid and unpaid. The Tribunal noted that at no time during the Complainant's testimony, nor her cross examination of the Accounts Manager regarding her sick leave, nor in her termination meeting of 1st September, 2023, did the Complainant challenge the Respondent's account of her sick leave results or that her employment could be terminated as a result of the sick leave clause.

75. The Tribunal could not ignore the egregious claims by the Complainant in her Statement of Claim and in her written Closing Statement, that she was never provided with a termination letter, nor a departure letter, nor the reasons for her termination. Evidence presented by the Respondent – and not disputed or denied by the Complainant, showed that in the letter dated 1st September, 2023, that the Complainant was provided with 60-days' notice as outlined in her contract of employment; noting that the last day of employment would be 1st November, 2023. The letter was presented by the Office Manager to the Complainant on the 1st September, 2023. The Complainant refused to sign the letter, and this was verified in writing by the Accounts Manager who was witness to the termination meeting and to what document was presented. The second document presented to the Complainant: *Reasons for Termination* –

was dated and presented to the Complainant on 11th September, 2023. That document outlined the two (2) reasons for the Complainant's termination of employment: the 10th July, 2023 mislabeling incident, and exceeding the total amount of allowable sick days. A Departure Letter dated November, 1st, 2023 addressing the Complainant's final pay and benefits was prepared for the Complainant, to be communicated to her during an exit interview. However, the Complainant – as stated by her during her testimony – did not attend the exit interview because she had already found another job.

#### DECISION

76. The Tribunal finds that the Complainant's claim for unauthorized deductions is without merit, therefore the redress sought for unpaid wages of \$4000.00 is denied.

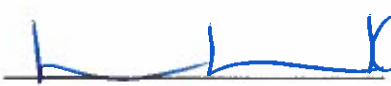

77. The Tribunal further finds that the Complainant's dismissal was fair and in accordance with the reasons for termination of the employment as provided for in the Complainant's contract of employment, signed by both parties, and commenced on 15th November, 2022.

78. Therefore the remedy of three (3) weeks wages, as sought by Complainant, is denied.

79. The parties to this Hearing were reminded, and it was acknowledged, that the Determination and Order of this Tribunal are final.

80. Therefore in accordance with **Section 440** of the **Employment Act 2000**, a party aggrieved by a Determination or Order of the Tribunal, may appeal to the Supreme Court *on a point of law*.

DATED this Day, 22<sup>nd</sup> July 2025

  
\_\_\_\_\_  
Lorrita J. Tucker  
Chairman  
\_\_\_\_\_  
Peter L. Aldrich  
Deputy Chairman  
\_\_\_\_\_  
Judith Hall-Bean  
Tribunal Member



