

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

("the Tribunal")

BETWEEN

Claimant

and

id.

Respondent

DETERMINATION & ORDER

The Hearing 27 June 2025

Present:

Members of Tribunal:

**John W. Payne, Chairman
Michelle Scott, Deputy Chair**

Complainant:

1 (via WebEx)

Respondent Representative:

Richard Horseman, Counsel

Barristers & Attorneys

Wakefield Quinn Limited

31 Victoria Streets,

Hamilton HM10

Also present:

Owner

Owner

Operations Manager

Legal students:

Preamble

The third Tribunal member declared a conflict the morning of the Hearing. It was decided to proceed with the Hearing, exercising Schedule 2 subsection (3) as it was intended to be a Directions Hearing and therefore, exercising Section 12 (2) Conflict of Interest for the Substantive hearing.

The Hearing

1. The Chairman opened by indicating that in such matters, the Tribunal receives a brief summary of the issues from the Labour Relations Officers' mediation.
2. It was the Tribunal's understanding that the complaint was filed for violation of **the Employment Act 2000 Section 8, Unauthorised deductions**, and read with Section 10, withholding of tips or other gratuities prohibited.
3. Both Parties confirmed that this was correct. The Respondent's Representative further acknowledged that his client was guilty of withholding gratuities as required under the Employment Act 2000, but this was due to monies owing by the Complainant to the Respondent due to misappropriation of funds.
4. The Chairman then indicated that he was going to exercise Schedule 2 Section 20 of the Employment Act 2000, which states "**the Tribunal shall**

regulate its own proceedings as it thinks fit” and proceed with the matter as a Hearing.

5. The Chairman then asked Counsel to comment on the matter in relation to Section 8 (3) (b) of the EA, Section 8 Unauthorised deductions states:

(1) An employer shall not make a deduction from an employee’s wages unless—

(a) the deduction is required or authorised to be made by virtue of this or any other enactment, a collective agreement or a provision of the employee’s contract, or by order of any court or tribunal; or

(b) the employee has previously signified in writing his agreement or consent to the making of the deduction.

(2) Where the total amount of wages paid on any occasion by an employer to an employee is less than the total amount payable on that occasion, the amount of the deficiency shall be treated as a deduction for the purposes of subsection (1).

Subsection (1) does not apply—

where the purpose of the deduction is the reimbursement of the employer in respect of an overpayment of wages or an overpayment in respect of expenses incurred by the employee in carrying out his employment;

(b) to a deduction made in consequence of any disciplinary proceedings which were held by virtue of this or any other enactment;

(c) to a deduction made in consequence of an employee’s participation in a strike or irregular industrial action short of a strike that results in a withdrawal of labour.

6. In response, Counsel indicated that over the period of employment the Complainant abused his position within the company and misappropriated funds. He alleged that the amount taken exceeds the amount that the Respondent owes to the Complainant. In fact, he indicated that the quantum outstanding is not known.

7. When asked Counsel indicated that the matter regarding the alleged criminal conduct had not been before another authority.
8. The Chairman advised that the Tribunal saw this matter in two parts:
- An employment matter under the Employment Act 2000
 - A criminal matter due to the alleged misappropriation.
9. The Tribunal ruled that it did not have the authority to address the criminal issue and believed that this should be resolved first before it is considered by the Tribunal. The Chairman quoted **EA 44H Award of the Tribunal, not to conflict with any Act:**

44H Where any matter referred to the Tribunal involves questions as to wages, or as to hours of work, or otherwise terms or conditions of or affecting employment which are regulated by any Act under the Employment and Labour Code or by any other Act, the Tribunal shall not make any award which is inconsistent with that Act.

10. In this matter, the Tribunal believed that “any other act” was the Criminal Code Act 1907, regards compensation or reimbursement of any monies that may be owed by the Complainant.
11. The Tribunal was in receipt of a letter of admission by the Complainant. However, this was not accepted. The Tribunal was not satisfied that the admission may not have been coerced, as the Complainant was a non-Bermudian and off-island.
12. The Chairman indicated that the complaint filed was for unauthorised deductions and as such the Tribunal was not prepared to consider any other possible scenario. He added the Respondent could have exercised his

options under the *Act inter alia*, Section 24 Disciplinary Action in particular subsection (2); and Section 25 Summary dismissal for serious misconduct but no evidence was demonstrated to prove that they did.

Determination and Order

Counsel asked the Chairman was the Tribunal going to rule from the bench and received an affirmative response.

In this matter, the Tribunal has determined that there are two outstanding issues;

- a. The Employment Act 2000 violation of Section 8, Unauthorised deduction, in which the Respondent has admitted fault in this matter. Therefore, the ruling should be in favour of the Complainant.
1. The allegation that misappropriation of funds which have not been substantiated in a legal forum, and the Tribunal believes that it is outside of its remit.

Therefore, the Order ruling in favour of the Complainant is subject to any evidence/judgment from an appropriate authority that misappropriation has been proven.

Having reviewed the Order made from the bench, the Tribunal believes that it lacked some specificity and therefore amends the Order to reflect a timeline. Therefore, the Order is amended. The Respondent, subject to any ruling from another authority to the contrary, is to compensate the Complainant within 3 months for :

- a. \$2,855.52 for withheld gratuities.
- b. 2 days unpaid wages
- c. 2 days vacation pay

Tribunal Procedural Matters

1. According to Section 44E, no report on or comment on this matter may be made by either party that is not a fair and accurate report or summary of the proceedings.
2. If either party makes any report on or comment on this matter contrary to Section 44E, such party shall be liable to a civil penalty.
3. Both Parties have the right to apply to conceal any matter of the Hearing/Award as outlined in Section 44F (3) Notification and Publication of Award of the Act.
4. According to Section 44K, either party aggrieved by this decision has the right to ask a question about interpreting the Tribunal award.
5. Under Section 44O, either party aggrieved by this decision has the right to appeal to the Supreme Court on a point of law within 21 days after receipt of notification of this award of the Tribunal.
6. The Tribunal does not award legal costs to any party to these proceedings.

John Payne, Chairman



Michelle Scott, Deputy Chairman



Dated: 28 June 2025