

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

BETWEEN:

Ms.

Complainant

AND

Island Ophthalmology Ltd. (Jennifer Faries)

Respondent

DECISION

Date of Complaint: September 8th, 2022
Date Investigation Completed: November 18th, 2022
Date of Referral: January 18th, 2023
Date of the Hearing: 28th March 2023

Tribunal Panel Members: Ms. Kelly Francis, Chairman
Mr. Peter Aldrich, Tribunal Member
Mr. Gary Phillips, Deputy Chairman

Present: Ms. , Complainant
Ms. Jennifer Faries, Respondent

The complaint filed under The Employment Act 2000 (The 'Act') pursuant to Section 25 of the Act.

To Be Noted

The initial complaint lodged with the Labour Relations Section included three complainants, all former employees of Island Ophthalmology. The Tribunal elected to treat each complainant

separately as their circumstances were unique from each other. Similarly, individual judgements have been rendered.

Background

Further to the hearing held on March 28th, 2023 (the “Hearing”) between Ms. (the “Complainant”) and Island Ophthalmology, Ms. Faries (the “Respondent”). The Complainant is seeking compensation for pay in lieu of notice and for unfair dismissal pursuant to Sections 21 & 28 of the Employment Act 2000, of 26 weeks’ wages.

The Hearing

The Tribunal was presented with a statement by Ms. [REDACTED] who contended she was unfairly terminated by the Respondent for serious misconduct. She further contends she was not compensated for accrued / unused vacation pay. The Tribunal was also presented with video footage by the Respondent which was reviewed and determined that some footage had relevance.

Ms. Faries (Respondent) opened the hearing with a chronological overview of the circumstances leading to the termination decision. She provided evidence in the form of video footage which supported her claim that Ms. [REDACTED] acted inappropriately in front of a patient and provided documentation to support instances which are deemed serious misconduct and could result in termination. Ms. Faries also presented confirmation that Ms. [REDACTED] had received payment for or taken all eligible vacation days.

Ms. [REDACTED] (Complainant) was unable to refute the evidence presented but contended that anyone would have done the same if they were as irritated as she had been at the time. The Complainant did agree with the Respondent on the matter of the vacation days and advised the Tribunal that she withdrew her claim for payment in this regard.

Deliberations

1. The Tribunal have heard the representations from both Parties and considered reasons given by the Complainant to support her claim that she had been unfairly dismissed for serious misconduct.
2. Summary dismissal for serious misconduct states: An employer is entitled to dismiss without notice or payment of any severance allowance an employee who is guilty of serious misconduct—

- (a) which is directly related to the employment relationship; or
- (b) which has a detrimental effect on the employer's business,

such that it would be unreasonable to expect the employer to continue the employment relationship.

3. The Tribunal was not persuaded by the Complainant that her behaviour did not constitute serious misconduct.
4. The Tribunal was persuaded that the Complainant did in fact use obscene language in front of a patient and acted in an insubordinate manner towards her employer (the Respondent), which together constituted serious misconduct.
5. The Tribunal was persuaded that the Respondent was within her right to terminate the Complainant for cause as provided in the Employment Act, Section 25.

Determination and Order

As the Tribunal could not find sufficient evidence to support the unfair dismissal claim by the Complainant, no judgement was made.

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.

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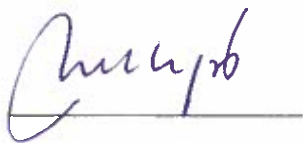
Dated this 10th day of May 2023



Ms. Kelly Francis,
Chairman



Mr. Peter Aldrich,
Tribunal Member



Mr. Gary Phillips
Tribunal member
