

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

BETWEEN:

Dr. Jacob Smith

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: Dr. Jacob Smith, Complainant
Ms. Jennifer Faries, Respondent

The complaint filed under The Employment Act 2000 (The 'Act') pursuant to Section 37 (4) 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.

It is also noted that the Complainant is presently engaged in a case at the Supreme Court with the Respondent, but it was determined that those proceedings did not materially interfere with the proceedings of the Tribunal.

Background

Further to the hearing held on March 28th, 2023 (the "Hearing") between Dr. Jacob Smith (the "Complainant") and Island Ophthalmology Ltd / Jennifer Faries (the "Respondent"). The Complainant is seeking compensation for unpaid wages and for constructive dismissal pursuant to Sections 29 and 40 of the Employment Act 2000, of 26 weeks' wages.

The Hearing

The Tribunal was presented with a considerable body of evidence to review in advance of and during the Hearing and was tasked with discerning what was and was not germane to the complaint filed on September 8th, 2022, by Dr. Smith ("Complainant"). The Tribunal was also presented with video footage by the Respondent which was reviewed and determined that some footage had relevance.

Dr. Jacob (Complainant) was invited to present his case. During which he contended that despite the fact that he was a Partner and Shareholder in the Business, he was treated in all respects as an employee and after a series of progressively negative experiences with the Respondent, he elected to tender his resignation on May 25th 2022 with an effective date of August 25th 2022.

(Detailed written statements were included to describe the experiences mentioned above.)

While under his notice period, the Complainant contends that the situation became increasingly intolerable and on August 22nd 2022, he was forced to amend his resignation date and quit with immediate effect on August 22nd 2022. As a consequence of this altered date, he is seeking compensation for constructive dismissal.

Ms. Faries (Respondent) was then invited to respond to Dr. Smith and presented evidence that supported the deterioration of their working relationship. Further evidence indicated that the Complainant had communicated with outside parties regarding his intention to resign and join with another practice and also his intention to be out sick for a considerable portion of his notice

period. The Respondent also submitted evidence to show that the Complainant acted with authority across all aspects of the business in his capacity as Partner and Shareholder.

Deliberations

1. The Tribunal have heard the representations from both Parties and considered reasons given by the Complainant to support the conditions of Section 29 (1) of the Employment Act 2000: Constructive Dismissal.
2. Constructive Dismissal states: "An employee is entitled to terminate his contract of employment without notice where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship having regard to the employee's duties, length of service, and circumstances."
3. The Tribunal was not persuaded by the Complainant that circumstances had deteriorated to the extent that completing the final three days of employment was no longer possible. Furthermore, the Tribunal was surprised by the Complainants' admission that he was not familiar with/ aware of the definition of constructive dismissal as stated in Section 29, such that we had to read it to him during the proceedings.
4. The Tribunal was not persuaded by the Complainant that the Respondent failed to appropriately compensate the Complainant during his employment, up to his last day.
5. The Tribunal was persuaded that the Complainant was treated as a Partner and Shareholder and had authority to direct both his other staff members and outsourced service providers, which is in keeping with that of a Business Partner.
6. The evidence presented by the Respondent provided the Tribunal with sufficient evidence to conclude that the Complainant had not operated in good faith in his dealings with the Respondent. Further the evidence supported the Respondents' claim that the Complainant had planned his departure in advance of tendering his resignation on May 25th, 2022.
7. The Tribunal did not address content pertaining to equipment, customs duty payments or payroll taxes as they were outside of the scope of this Hearing.

Determination and Order

The Tribunal could not find sufficient evidence to support a constructive dismissal claim by the Complainant. Nor could it find evidence that there were outstanding wages owed. As such, 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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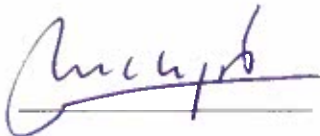
Dated this 10th day of May 2023



Ms. Kelly Francis,
Chairman



Mr. Peter Aldrich,
Tribunal Member



Mr. Gary Phillips
Tribunal member