

IN THE MATTER OF A COMPLAINT BEFORE THE EMPLOYMENT & LABOUR
RELATIONS TRIBUNAL PURSUANT TO PART VA SECTION 44B EMPLOYMENT
ACT 2000

BETWEEN

AJEE CAMPBELL

COMPLAINANT

AND

SCOOTER MART

RESPONDENT

Tribunal Members:

John Payne, Chairman
Yolanda Outerbridge, Deputy Chair
Paget Wharton

The Direction Hearing was held 1st August 2023. The Respondent was not present.
Directions Order were sent to both Parties.

Hearing Date: 9th September 2023

Present:

Ajee Campbell, Complainant
Howard Ebbin, Tribunal Administrator

Note: The Respondent was not present at the hearing.

**Issue: The Complainant has filed a complaint under the Employment Act 2000
section 28 Unfair Dismissal**

Opening

The Chairman opened the Hearing by commenting on the absence of the Respondent. He noted the authority provided to the Tribunal by Employment Act 2000 section 44C (1) (a) *Without prejudice to any other powers conferred upon it under the Employment and Labour Code, the Tribunal may –*

(a) proceed to hear and determine any matter in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so;

It was confirmed that the Respondent failed to respond to any communication sent to him by the Tribunal Administrator. The Tribunal decided that as no reason was given for the absence of the Respondent; it should proceed with hearing the matter.

Case of The Complainant

1. The Complainant in his submission to The Employment and Labour Relations Tribunal Hearing as contained in the Letter to the Tribunal (complainant bundle page 1) indicated that Contrary to the Termination Letter (complainant bundle page 5) he was not guilty of any of the reasons given
2. These being:
 - a. Multiple instances of unapproved absences throughout 2023.
 - b. Repeatedly walking off the job with no notice to management, leaving your colleagues to finish the unfinished work.
 - c. A general negative attitude in the workplace.
 - d. An instance of rude behavior and inappropriate language to a Director
3. In his defense of the allegations, the Complainant advised that there were never any instances where he took unapproved time off. He told the tribunal that in all instances, whenever he needed to take time off he advised his manager in advance and reminded them the day off. The complainant noted that most of the sick leave he took related to the need to take care of his daughter due to her being sick or having to deal with an emergency. He further advised that there was on an occasion on 22 March 2023 in which he could not inform the Respondent of a family emergency as he had lost his phone.
4. With regards walking off the job the Complainant recalled the only occasion in which he left work was due to an unexpected incident where a colleague left a pan of oil out and he inadvertently stepped in the pan causing the oil to spill all over his uniform. He left to go home and wash his uniform as he did not have any other clean uniforms. His manager was not available as he was busy with a client, but he did let a colleague know he was leaving and would be back as soon as his uniform was clean.
5. He evidenced that on one occasion the father of the owner of Scooter Mart Ltd. who also is the landlord for the property, approached him regarding the

trash not being in the trash bins. The landlord while also a Director did not have any management authority at the facility. There was an exchange between the two and because the Director continued to comment on the matter and in order not to be rude, the Complainant left the facility.

6. The Complainant stated that he suspected he was going to be terminated based off the behavior of the Owner and the other senior staff. He advised that prior to coming to work that day he purchased a set of tools from Sears and put his own tools in his car. When questioned he indicated that mechanics had the ability to use the Company's credit card to obtain tools or other items needed. He used the tools purchased for the company instead of his own tools.
7. During his testimony the Complainant indicated that he was advised by the Company's accountant (Mr. Anderson) that his wages would be reduced from \$75,000 to \$70,000 as he would no longer be working on Saturdays. The Complainant noted that he had previously notified the owner of the Company that he could no longer work on Saturdays because of his children. He offered to reduce his salary as a result, but the owner confirmed that his salary would remain the same as he was a salaried employee. The Complainant was therefore surprised when the accountant told him that his salary was being reduced. In addition, no overtime was paid to any staff regardless of the hours worked. (Complainant bundle pages 3/4).
8. The Complainant advised the Tribunal that on May 9, 2023 he was called into a meeting by Justin Burke (General Manager) and Vermonde Virgil (Service Manager). During that meeting they advised that the owner wants him gone and that he was being terminated. The Complainant noted that they could not give a reason why he was being terminated other than this is what the owner wanted. The Complainant requested the reason for the termination in writing. A letter dated May 10, 2023, was addressed to the Complainant and signed by Mr. Burke setting out the reasons for the termination.
9. The Complainant disputes the reasons set out in the termination letter, in particular, that he said at any time that "he quit". He challenged the portion of the Termination Letter that stated "*and 'the straw that broke the camel's back' was on Friday May 05, 2023, when you walked off the job and said you 'quit'.*" The complainant confirmed that at no time did he indicate that he quit.

10. The Complainant advised that he was seeking as compensation:

- a. *24 days' pay in lieu of notice.*
- b. *4 vacation days.*
- c. *Withdrawal of the reason for termination from all records.*

Deliberations

11. The Tribunal accepted the Complainant as credible. He was consistent in his responses and did not appear to exaggerate in his presentation or written documents or request for compensation.
12. The Tribunal having heard from the Complainant was disappointed that the Respondent chose not to participate in the process. In fact, it was noted that the Respondent not only did not attend either of the Directions or Substantive Hearings, but also did not reply to any of the communications sent on behalf of the Tribunal.
13. Section 44D (2) (b) states inter alia: *Any person who – fails without reasonable excuse to attend before the Tribunal in compliance with such requirement; shall be liable to a civil penalty as may be imposed by the Tribunal.*
14. **It is therefore determined that the Respondent is in violation of the Act namely being non-compliant and should as a result be levied with a civil penalty.**
15. During his presentation the Complainant produced his Letter of Employment. During questioning from the Tribunal Members, he advised that no overtime was paid to any staff member and staff were expected to work Monday to Saturdays, accounting for a 46-hour workweek. **(See Item 5 Hours of Work on page 7 of the Complainant package).** This violates **Section 9 Overtime of the Employment Act 2000** that states: *(1) Any hours worked by an employee in excess of forty hours a week shall either- (a) be paid at the overtime rate; or (b) be paid at the employees' normal hourly wage and compensated by giving him the same number of hours time off in lieu.*
16. **This is a violation of the Act.**

17. The Tribunal reviewed and discussed the contents of the Termination letter dated 10th May 2023. (page5). In the questioning of the Complainant, he advised that he was not guilty of the points raised in the letter. The Tribunal concluded that the respondent had not followed the process as set out in the Company's Disciplinary Procedures, Employee Conduct and Work Rules set out on page 23 of the Complainant's bundle. No oral or written warnings were given.

18. The Tribunal concluded that section 26 of the Employment Act 2000 would have been appropriate if the Respondent felt that the conduct of the Complainant violated any of the Company's policies. This was not done. The Tribunal dismissed in the absence of a rebuttal from the Respondent that the Complainant did "quit" his employment as alleged by the Respondent.

19. Noting that the period of employment was from July 1st, 2002, to May 9th 2023, the Complainant is not entitled to compensation under **Section 40 Remedies: Unfair Dismissal**.

Determination

20. Having heard the evidence of the Complainant and noting the lack of rebuttal based on the absence of the Respondent, the Tribunal have determined that:
 - a. The Respondent has unfairly terminated the employment of the Complainant as set out in **section 28**.

 - b. Based on the length of employment of the Complainant with the Respondent (July 2002 to May 2023), the Complainant is not entitled to any compensation as specified for in **section 40(5) of the Act**.

 - c. The Complainant is entitled to compensation in lieu of notice under **section 20 and set out in section 18(5)**.

 - d. The Respondent has violated the Employment Act 2000 **section 44 (2)(b)** for non-compliance.

Order

21. The Tribunal therefore Order that:

- a. The Respondent pay the Complainant 4 weeks wages in lieu of notice and
- b. 4 days accrued vacation days.
- c. The award to be paid by ___ November 2023.
- d. The Respondent , according to section 22 ,shall provide a Certificate of Termination to the Complainant and remove any reference to the Complainant being terminated . The Respondent shall also refrain from using the reason for termination (as set out in the 10 May 2023 termination letter) in any references provided for the Complainant.
- e. The Respondent shall pay a fine of \$5000.00 for non-compliance under **section 44(2) (b) Power to obtain information.**
- f. The fines to be paid to the Accountant General by Friday 17th November 2023. Failing to pay the fine will result in Non-compliance Order and further penalty by the Tribunal.

22. The Complainant was advised that the award of the Tribunal was binding. And that if a Party was aggrieved by the Determination and Order they may appeal to the Supreme Court on a point of law, from the date of 19th October 2023, that is 21 days from receipt of the Determination and Order.

John Payne, Tribunal Chairman



Yolanda Outerbridge, Tribunal Member



Paget Wharton, Tribunal Member



Date: 19th October 2023