

**IN THE MATTER OF THE EMPLOYMENT ACT 2000 BEFORE THE  
EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL (the “Tribunal”)**

**BETWEEN**

**Complainant**

**AND**

**Horizons Communications  
(Gilbert Darrell and Kate Norris “TENEO”)**

**Defendant**

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**DECISION**

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**Date of Hearing:** 17<sup>th</sup> July, 2023

**Written Summation Deadline** – 24<sup>th</sup> July, 2023

**Present:**

The Hon Derrick V. Burgess, JP - Tribunal Chair

Ms. Valerie Young -Tribunal Member

Mrs. Judith Hall-Bean - Tribunal Member

· Complainant (via Zoom)

The Employer did not attend – invoked- Section 44C (1A) of the Employment Act 2000

The dispute is filed under Section 37 (4) of the Act

**Issue**

1. The Complainant is seeking redress for unfair dismissal under section 40 of the Employment Act 2000.

The Complainant is seeking the following:

- 30 hours of overtime pay \$1593.90
- 13 weeks of wages - \$18,416.66
- Compensation for 4 weeks’ of notice period - \$5,666.66

**Background –**

2. At the commencement of the hearing the Complainant was notified that panel member Judith Hall Bean went to the Hospital and therefore was not present and was asked did he have any objection to continuing the hearing?

He replied that he had no objection and we can continue in accordance with (Section 13 – Schedule 2)

3. The Complainant was employed by the Employer from 14<sup>th</sup> February 2022 until 1<sup>st</sup> June 2022 as a Field Engineer. The Field Engineer will be interacting with customers and co-workers daily in a fast-paced work environment. The position requires the Field Engineer to be in the field for 75% of the time.

The following are key responsibilities:

- Assists with system and network commissioning, integrations and activations including experience in construction and installations (Carpentry).
- Performs system tests using scanners, spectrum analyzers, transmitters, and other electronic test equipment.
- Maintains test equipment and tools for continuous use.
- Troubleshoots and repairs systems for optimal performance.
- Maintains test equipment and tools for continuous use.

Qualifications and Experience (excerpts)

- Two (2) years college degree (preferably technical).
- 5 years and related experience.
- Knowledge of various wireless technologies.
- Comfortable working in high pressure situations.
- Ability to receive and give direction on an as needed basis.
- Ability to work in groups.

Compensation

- \$68,000 - Salaried position (year 1)
- 15 days' vacation and 10 sick days per year
- Comprehensive health insurance plan and private pension
- Possibility of a performance bonus in year 2

4. Mr. CW stated that he accepted and signed the 'employment offer'. He further stated that during his employment with Horizons Communications from 14<sup>th</sup> Feb to 1<sup>st</sup> June 2022, he fulfilled all of the responsibilities detailed in his contract, as well as the advanced tasks that were not outlined in his specific role. He confirmed he advanced quickly in the role and often received private and public accolades from the CEO – Mr. GD. I enjoyed the job and my attitude reflected this.

During my employment I received one (1) written warning for being late at a specific job site by ten (10) minutes.

Although this was more of a misunderstanding on my part and I took full responsibility and was issued a written warning and signed it. I was told on multiple times by Management that this was 'Water under the bridge'.

5. Mr. CW stated on the night of 31<sup>st</sup> May 2022, I was on a job site working until 9:30 pm for a client who was apparently good friends of the CEO, Gilbert Darrell. I had to collect my bike from a Management team members' house and make my way home, getting home around 11:00 pm to eat dinner and get ready for the next day. To assist with falling asleep, that night I took Melatonin. I ended up over sleeping through my alarm and woke up at 1:18 pm to a text message from the Director of Human Resources stating that I have been terminated for 'No call, No show'. I did not receive an email or telephone call nor did anyone check to make sure that I was OK. I was not invited to come into the office to provide an explanation; Mr. [redacted] confirmed that this was a traumatic experience for him.
6. As I was terminated on the last day of the month, I was paid for the month of May and did not receive my overtime payment for that month. I followed up on multiple times regarding this issue and I did not even receive a retort. It was months later, when I was seen by a Horizons staff member at my new place of employment that I received an email the very next day from the Director of Human Resources stating that I was actually in debt to Horizon due to apparent missing tools. Mr. CW said he left his tool bag and all tools in the office the night before he was terminated. He communicated this via email to Human Resources but got no response.
7. He even sent another email to the CEO stating that he would like to involve the Police in this matter. The employees share communal work spaces and vehicles, although we have tool bags, things like large drills can't fit in the tool bags, so usually they are kept in the office or a vehicle. I sent emails months ago and I have yet to receive a response.
8. Please note the emotional and reputational damages I suffered as a result of this questionable 'dismissal'. Once my landlady came to the conclusion that I was unemployed, I was evicted for being a 'risky tenant'. I only mentioned this to my parents due to overwhelming feelings of embarrassment. It was very hurtful when the word spread that I was fired because of reasons that were untrue. Therefore, it was very difficult to find another job.
9. On July 17<sup>th</sup>, 2023, the Employers of Horizons Communications (Mr. GD) did not appear for the hearing, therefore Section 44 C - General Powers were invoked by the Tribunal.
10. A Directions Hearing was held on 29<sup>th</sup> May, 2023 and no representative from Horizons Communications appeared.
11. A Substantive Hearing was scheduled for June 15, 2023 and all parties were informed.
12. On June 14<sup>th</sup>, 2023, Mr. Darrell from Horizons wrote to Mr. Ebbin stating that he could attend because of health reasons and suggested that the hearing be rescheduled for July 2023, when someone from the Company will be able to attend.

13. After receiving the proper medical certificate, the hearing date was rescheduled for July 17, 2023, all parties was informed, but again, no one from Horizons Communication appeared.
14. At the July 17, 2023 Hearing, the Tribunal invited both parties to submit a written summation if they chose to and produce a copy of a signed 'Statement of Employment', final pay stub along with proven cost for the drills. This correspondence was emailed to both parties by Mr. Ebbin on July 17<sup>th</sup>, 2023 at 4:49 pm and was to be submitted no later than 3:00 pm July 24<sup>th</sup>, 2023. Mr. Ebbin in his email strongly recommended that they comply with this order.
15. Under the provisions of Sections 44D (2) Power to obtain information from any person/company who fails to act in accordance with this section shall be liable to a 'civil penalty', as may be imposed by the Tribunal. This section of the law was emailed to the attention of Kate Norris of Horizons Communications.
16. An email from KN dated July 24<sup>th</sup>, 2023 was sent to Mr. Ebbin – Subject Re: Horizons Communications Ltd. Ms. KN states that in her previous email dated June 8, 2023, *'I advise that Horizons Communications Ltd ("the Company") has insufficient funds with which to defend this case. The Joint Receiver ("JR's") of the Company are also unable to attend a hearing on behalf of the Company or incur fees to the detriment of the body of the creditors'*.
17. Ms. KN stated that, "The Company is no longer trading and there is no workforce in which to assist with any further requests. We note that complying with such requests remain an obligation of the Company, along with any associated penalties for non-compliance. The (JR) does not and should not be considered to assume responsibility for meeting the company's obligations to the Tribunal. For the avoidance of doubt, we wish to again highlight that the claim by Mr. CW is against Horizons Communication Ltd and any award made against the Company will rank as unsecured debt. The administration of which will fall under the remit of the Liquidator, once appointed".
18. In response, Mr. Ebbin did quote an instruction by the Tribunal from Section 33 (Winding Up) of the Employment Act 2000.
  1. The winding up or solvency of an employer's business shall cause the contract of employment of an employee to terminate one month from the date of winding up or appointment of a receiver, unless the contract is otherwise terminated under this part.
  2. This section shall not apply where, notwithstanding the winding up or insolvency, the business continues to operate.
  3. Subject to the retention of such sums as may be necessary to satisfy the costs, charges and expenses of the winding up of the employer's business, notwithstanding the priority conferred on certain debts by Section 236 of the Companies Act 1981 or any other enactment, on the winding up of an employers' business or the appointment of a receiver, the claims of an employee to the –

in accordance with the Act 44D, the Employer shall be liable to a civil penalty as may be imposed by the tribunal.

(e) The Company has not provided any information in regards to the stolen tools by employee CW.

(f) The Company has not provided any information in regards to the missing tools allegedly stolen by former employee CW.

## DECISION

### 19. The Employment Act states – conditions of Employment

- Statement of employment - not later than one week after an employee begins employment with an employer, the employer shall give to the employee a written statement of employment which shall be signed and dated by the employer and employee.
  - *the statement shall contain particulars of the following:-*
  - *the full names of the employer and employee;*
  - *the date when the employment began;*
  - *the job title and brief description of the work for which the employee is employed;*
  - *the place or places of work;*
  - *the gross wage or the method of calculating it, and the intervals at which it is to be paid;*
  - *the normal days and hours of employment or, where the job involves shift work,*
  - *the normal pattern of the shifts;*
  - *the entitlement to holidays, including public holidays, and paid vacation leave;*
  - *the terms relating to incapacity for work due to sickness or injury, including provision for sick leave;*
  - *the length of notice which the employee is obliged to give, and entitled to receive,*
  - *to terminate his contract of employment; details of any pension provided, whether under the National Pension Scheme (Occupational Pensions) Act 1998 or otherwise; any disciplinary and grievance procedures applicable; where the employment is not expected to be permanent, the period for which it is expected to continue or, if it is for a fixed term,*
  - *the date on which it is to end; any probationary period;*
  - *any dress code*
  - *the existence of any collective agreement which directly affects the terms and conditions of the employment; such other matters as may be prescribed; and may contain other details relating to the terms and conditions of employment.*
  - *where there are no particulars to be entered under paragraphs (k) to (o) of subsection (2), that fact shall be noted in the statement.*
  - *The statement may refer the employee for particulars of the matters mentioned in paragraphs (g) to (k) and (n) of subsection (2) to— the provisions of any collective*

- a. payment for vacation accrued but not taken
- b. payment for wages earned but not paid;
- c. and severance allowance as calculated in accordance with section 23(2) up to maximum of twenty-six week' wages, shall have priority over all other claims of the Crown.
- d. The debts mentioned in subsection (3) (a), (b) and (c) shall rank equally among themselves and be paid in full, unless the assets of the employer's business available for payment of general creditors are insufficient to meet them, in which case they shall abate in equal proportions.

## **Deliberations**

The Complainant commenced employment with Horizon Communications on 14<sup>th</sup> February 2022 and was terminated via a WhatsApp message on 2<sup>nd</sup> June 2022 at 1:18 pm. The reason given was 'No show, No Call'. He was told in the WhatsApp to return the Company truck (the truck was not in his possession when terminated) and tools and all other Company property. This was from Maria, the Director of Human Resources.

1. The employee (CW) was paid his monthly salary for May hours minus his 30 hours overtime. CW stated that when you work overtime in May, employees are paid in the following month's paycheck.
2. During his employment, he received a written warning for being 10 minutes late which he acknowledged and signed. He stated that he was told multiple times by Management that the warning was 'Water under the Bridge',
3. Employee, CW also stated that he often received private and public accolades from the CEO (Mr. GD). I enjoyed the job and my attitude reflected that. The Tribunal was given the documentation to support this.
4. In regards to the termination, the Tribunal asked the questions:-
  - (a) Why did the Company not call/reach out to the employee (CW) when he did not arrive to work on time as he did have a company phone?
  - (b) Why were they so anxious to terminate CW without meeting with him in person for an explanation?
  - (c) We the Tribunal has ruled that the termination was harsh and unwarranted we find that there is no 'Statement of Employment' in practice and none was given to the employee, CW which is a contravention of Section 6 and the employer has contravened the Act and shall be liable to a civil penalty in accordance with Section 6 (7) of the Act.
  - (d) The tribunal requested information in accordance with 44D of the Act via Mr. Ebbin and the Company failed to provide. Again failure to provide information and failure to attend a scheduled hearing is another contravention of the Act and

*agreement which directly affects the terms and conditions of his employment; or to any other relevant document, which is copied to the employee.*

- Where additional matters to be included in the statement are prescribed under paragraph (p) of subsection (2);*
- or the employer and employee agree to change any of the terms of employment particularized in the statement;*
- the employer shall, as soon as practicable and no later than one month after the matters are prescribed or the change agreed,*
- give to the employee an amendment to the statement containing particulars of the change or a revised statement which shall (in either case) be signed and dated by the employer and employee*

20. An Employer who contravenes this section shall be liable to a **civil penalty** as may be imposed by the Labour Relations Manager or the Tribunal.

21. The failure by the Employer – Horizons Communications to provide information requested and failure to attend the Hearing is contravention of the Act [44M] in which is **civil penalty** is liable to be impose a **civil penalty** no exceeding BMD\$10,000 as the Tribunal considers appropriate for each such contravention.

22. Therefore the Tribunal has imposed a **civil penalty** of BMD\$5,000.00 which is a contravention of Section 6 and a **civil penalty** of BMD\$4,000.00 which is a contravention of Section 44D.  
Total **civil penalty** is BMD\$9,000.00

**This amount must be paid within 30 days of the date of this award to the Accountant General via the cashiers on ground floor of the Government Administration Building, Parliament Street Hamilton.**

**NOTE**

Where the tribunal purposes to impose a civil penalty on a person, it must give the person notice of:

- a. the amount of the penalty
- b. the reasons for imposing a civil penalty and
- c. The right to make representation to the Tribunal within seven (7) days of the date of such notice.

**The Award to the Complainant:**

- Overtime pay of thirty (30) hours = \$1596.90**
- 4 weeks' pay in lieu of notice = \$5666.66**

**Total payable to Complainant is = \$7260.56**

This amount must be paid within 30 days of the date of this award to the Complainant. The Complainant may contact the **Receivers "Teneo"** at (542 0027) 19 Par-la-Ville Road, Third Floor, Hamilton to inquire as to how payment of Award is to be received.

**TRIBUNAL AWARD BINDING**

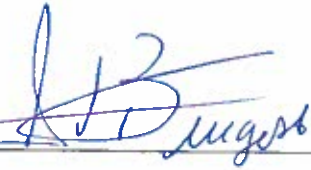
44 I – An award made by the Tribunal shall be binding on the parties to the matter before it.

**APPEALS**

44 O (1) A party aggrieved by a Determination Order, Declaration or other Decision of the Tribunal may appeal to the Supreme Court on a ‘point of law’.

(2) The Appeal shall be lodged in the Registry within twenty-one (21) days after receipt pf notification of the Determination Order, Declaration or other Decision of the Tribunal

**Date of this Determination Order is August 24<sup>th</sup> 2023.**

Chairman  
Mr. Dereck Burgess 

Deputy Chairman  
Judith –Hall Bean 

Tribunal Member  
Valerie Young 