

Suphawan Marasiriphan v. Xxxxx [2024]

DETERMINATION and ORDER

In Matter of Complaint Under The Employment Act 2000, Before The Employment and Labour Relations Tribunal.

TRIBUNAL

Members of the Tribunal: Lorrita J. Tucker, Chairman
Derrick Burgess, Deputy Chair
Judith Hall-Bean

Directions Hearing: 16th February, 2024

Hearing Date: 29th April, 2024

Adjournment Date: 29th April, 2024

Hearing Place: Department of Labour Relations
23 Parliament Street
Hamilton, HM 12,
Bermuda

Complainant: Suphawan (Tikki) Marasiriphan
Representative: None

Respondent: Xxxxx
Doing Business as: XXXXXXXX
Representative: None

STATUTORY AUTHORITY TO HEAR THE MATTER

The Tribunal Hearing was convened on 29th April, 2024. The Chairman confirmed the points to be considered by the Tribunal. The Chairman stated that the Tribunal's Directions Hearing was convened on 16th February, 2024. The Chairman stated that the Employment and Labour Relations Tribunal Hearing was being conducted in accordance with Section 44B (2), section 44C, General Powers and Section 44D, Power to Obtain Information, and that the Tribunal would regulate its own proceedings as it saw fit pursuant to Schedule 2 (20) of the Employment Act 2000 ("the Act").

TRIBUNAL DIRECTIONS HEARING

In the Directions Hearing held on 16th February, 2024, the party bringing the claim did not show. The Respondent was present. While the Tribunal discussed whether to proceed with the Hearing, the Tribunal Administrator checked all correspondence to the parties and communicated with the Tribunal that he had not received an acknowledgement of the Hearing date, nor had he received a notice that the Complainant could not attend. The Tribunal agreed to proceed with the Directions Hearing with the Respondent present, and agreed to have all directions sent to the Complainant – with all parties being open to rescheduling submission dates if necessary.

The Tribunal explained that should the matter proceed to the substantive hearing, the parties would have the opportunity without the Tribunal's assistance, to engage in meaningful dialogue, to attempt to reach a settlement to their dispute. The Tribunal specified that in the event that the parties were unable to reach a settlement, once the substantive Hearing commenced, the Tribunal's ruling would be final; only being overturned on a point of law. Post-hearing, the Tribunal Administrator confirmed that the Complainant's email address was incorrect, therefore she had not been aware of the Hearing date and time. At that time, the Complainant stated that she wished to continue with her complaint and would comply with the directions provided as a result of the Directions Hearing.

TRIBUNAL'S SUBSTANTIVE HEARING

The parties were asked if they wanted time to resolve the matter in the absence of the Tribunal or whether they wished to allow the matter to be determined by the Tribunal. Both the Complainant and the Respondent confirmed that they wished to proceed directly to the substantive Hearing.

BACKGROUND

THE COMPLAINANT'S POSITION

The Complainant's position is that on Friday, 21st of April 2023, her employer – the Respondent, sent an email to a client, blind copying the Complainant; the client was due to attend a therapy session on the morning of Saturday, 22nd April, 2023. The nature of the email sent by the Respondent to the client referred to the company's cancellation policy, and confirmation of the appointment. The Complainant's charge is that the company did not have a clear and comprehensible cancellation policy, and that the Respondent chose to send such information to this particular client, only, (not to other clients), showing that the Respondent had a bias against this particular client. That on the day of the client's appointment and upon his arrival, the Respondent engaged him in a conversation about the cancellation policy; the Complainant believed this discussion was not warranted, because the client had acknowledged receipt of the Respondent's earlier notice on the policy and confirmed his appointment. The Complainant apologized to the client for the Respondent's actions - based on her belief that he was being treated unfairly by the Respondent. And, while allowing the client to prepare for his treatment – claimed that the Respondent stood by the treatment door to listen to the Complainant's conversation with the client. The Complainant believed this was a sign of distrust of her, and a sign of disrespect to the client and against the Code of Ethics that both parties had signed.

A heated argument ensued between the parties about the booking and cancellation policy and the cancellation of one of the Respondent's clients; ultimately the Complainant's client's imminent treatment was cancelled. The Complainant stated that the encounter pushed her to emotional and mental strain and readiness to work (on her next client), so she decided to leave for the rest of the day. She further stated that once off the property, that she was denied access to her account on the company's Booker System. The Complainant then received an email from the Respondent inviting her to return to the workplace on her off day to attend a formal disciplinary meeting – to which the Complainant complied. The Complainant's agreement to attend the meeting was based on not being able to return to work until an agreement on resolution was signed by both parties. During the meeting, attended by the Respondent's spouse, who was also the Company Director, and recorded by both parties, the Complainant believed that the Respondent spoke to her in a derogatory manner and that she was unworthy of trust. In addition to discussing the dispute at the crux of the matter (the cancellation policy and how this was communicated to the client), the Complainant also spoke about her displeasure with not having a lunch break. Upon the completion of the meeting to seek resolution and mutual agreement on changes to bring workplace harmony and a respectful working relationship – the parties agreed to sign the agreement before the Complainant returned to work. The Complainant received the agreement via email from the Respondent, and signed the agreement, but claimed to the point of preparing to return to work the following day, that the Respondent did not send her (the Respondent's) signed agreement. Having

received no replies from the Respondent regarding the agreement, and still not being able to access the Booker System to see her work schedule, the Complainant returned to work on 26th April, 2023, without being given a signed agreement. The Complainant claimed that immediately upon her return to work on the morning of the 26th April, 2023, the Respondent breached terms of the agreement by discussing the previous day's meeting topics; although it had been agreed that such discussions would not happen during the work-day rather, be discussed the following week. As such, the Complainant felt forced to leave the workplace against her will, based on the Respondent's conduct of continuing to discuss the issues.

Upon leaving on the 26th April, 2023, the Complainant informed the Respondent that she would seek help from the Labour Relations Office to get resolution to the issues. After an acknowledgement of this comment from the Complainant, in which the Respondent is said to have stated that the relationship had come to a point where the Complainant and the Respondent could no longer work together, the Respondent was said to be "happy to release" the Complainant. The Complainant stated that she then packed her belongings and walked away from the workplace.

The Complainant's position is that she had no choice to leave the workplace based on the situation that unfolded on Saturday, 22nd April, 2023, and through to the morning of Wednesday, 26th April, 2023 when she returned to work. As a result, she has claimed to be constructively dismissed, and is seeking three (3) week's wages.

The Complainant had no witnesses.

THE RESPONDENT'S POSITION

The position of the Respondent, the employer/owner and operator of Xxxxx, is that from the time of the Complainant's hire on 15th November, 2021 as a Beauty Therapist at Xxxxx, that she had always been respected and proven herself to be professional and responsible. Therefore, with full independence, the Complainant had been allowed to organize her own schedules, including having contact with clients as necessary. She was consistently fully booked, with a cancellation list to fill any availabilities; she was also given scheduling authority and access to her schedule in two accounts in the company's Booker System.

Prior to the day of the dispute – Saturday, 22nd April, 2023, the Respondent claimed that the client at the crux of this matter was contacted about the cancellation policy because the Complainant had pointed out to the Respondent that the client would most likely not show (on Saturday 22nd, April, 2023) because he had missed several appointments. To address what the Respondent believed was a real concern of the Complainant, she emailed the client the company's cancellation policy and confirmed the appointment information. When the client arrived, the Respondent (as the owner of the business) introduced herself, and she and the client spoke in general terms. The Respondent denies following the Complainant to the treatment room to listen in on the Complainant's conversation with the client. The Respondent stated that her reason for waiting for the Complainant to exit the treatment - in order for the client to prepare himself for the treatment, was because she had been told by the Complainant, prior to the Complainant moving to her treatment room - that a lunchtime client of the Respondent had cancelled. The Respondent had two appointments over the lunch period and wished to seek clarity on which client had cancelled – as it was less than an hour before either one of the appointments might arrive. The Respondent claims the Complainant exited the treatment room and commenced arguing about why the Respondent was listening to her conversation; about not being trusted; breaking the code of ethics; and by following her to the reception area and persistently pointing out and questioning the Respondent on whether the other clients in the computer – scheduled for appointments – had also been informed of the cancellation policy and confirmed. Further, that in the midst of the morning's dispute, the Complainant stated that she had been approached by another company to do massages for their employees. The Respondent agrees that she raised her voice in response at the escalation of the situation. The Respondent contends that once the client was released, the Complainant tidied the treatment room, took

her bag and left the premises for the day. Consequently, the Respondent canceled the Complainant's remaining clients for the day and continued on meeting her own clients.

The Respondent decided to call a formal disciplinary meeting with the Complainant to discuss the situation which unfolded on Saturday, 22nd of April, 2023, and to seek agreement on a way forward – before the Complainant was to return to work. Both parties tape-recorded the meeting. The conclusion to the meeting resulted in a list of topics and guidelines for the parties to abide by once the Complainant returned to work. The Respondent denies that no agreement was prepared or signed for the Complainant rather, that the agreement was in an envelope on the reception desk for the Complainant to collect.

The Respondent had no witnesses.

THE TRIBUNAL'S CHARGE

The Tribunal is charged with determining whether the Complainant received a complete Statement of Employment as required in Section 6 of the Employment Act and whether the Complainant was forced to leave her place of employment due the Respondent's conduct and treatment of the Complainant, and thereby entitled to claim constructive dismissal. Consequently, as a result of leaving her place of employment against her will, whether the Complainant is entitled to pay in lieu of notice pursuant to the Employment Act, Section 40 Remedies: Unfair Dismissal.

CASE OF THE COMPLAINANT

- 1) The Complainant commenced employment as a Beauty Therapist for Xxxxx on 15th November, 2021. Her last day of employment was 26th April, 2023. Total term of employment was 17 months.
- 2) The Complainant stated that on Friday, 21st April, 2023, the Respondent sent an email to one of her clients explaining the company's cancellation policy and confirming his appointment details; she was blind copied.
- 3) The client responded to the email and confirmed his appointment for Saturday, 22nd, April, 2023.
- 4) The Complainant contends that the Respondent had not implemented a cancellation policy on the company's website or scheduling software. And, without a clear cancellation policy, clients were not subject to be charged.
- 5) The Complainant's position is that in spite of not having a clear, posted, cancellation policy, the Respondent chose to single out the Complainant's client by sending him a direct email about the cancellation policy, but did not send the same email to other clients who had cancelled their appointments; were no-shows; or to clients who had not confirmed their appointments. Based on this action, the Complainant stated her belief that the Respondent had a bias against her client.
- 6) The Complainant stated that the client had been referred to her directly and that he did not have a history of not showing for his appointments; that he always arrived on time. When the client was unable to make his appointments, he would call her to cancel or reschedule.
- 7) On Saturday, 22nd, April, 2023, the Complainant witnessed her client's arrival, at which time she heard the Respondent introduce herself and inform the client of the previous email sent on Friday, 21st April, 2023.
- 8) The Complainant stated that while she prepared the treatment room, she heard the conversation "going on and on". That since the client had acknowledged receipt of the email content – that it was "not necessary" to discuss the issue with (her) client "all over again".

9) The Complainant maintained eye contact with the client and stated that he sat calmly while awaiting her and agreed to start his session early. The Complainant stated that once in the treatment room and during the consultation to discuss medical or health issues, that she explained and apologized to her client about the situation that occurred with the Respondent.

10) The Complainant stated that while the discussion ensued with her client inside the treatment room, she noticed a shadow at the bottom of the door; she concluded the conversation to allow the client an opportunity to get ready for his treatment.

11) Once the Complainant left the treatment room, she stated that she saw the Respondent standing right by the door. At this time, the Complainant stated that she questioned the Respondent, asking why she was standing by the door listening to the conversation during her consultation (with her client).

12) The Complainant stated that the Respondent replied that she had heard the conversation from the beginning. To this, the Complainant stated to the Respondent that it was not right for her to stand by the door to listen to conversations, and (that) it clearly showed a "disrespectful manner".

13) The Complainant further explained that the Respondent's explanation for being outside of the treatment room door was to wait for the Complainant and to ask her which of the Respondent's clients (both scheduled for facial treatments) had cancelled earlier that morning.

14) The Complainant explained that she had already told the Respondent that morning that her client had cancelled, and that the Respondent had acknowledged this.

15) The Complainant went on to tell the Respondent that she had built trust with her clients and held a code of ethics and conduct for high standards of her professional practice; invested time and money in her studies and would not jeopardize her license as well as her reputation.

16) The Complainant stated that the client was still in the treatment room and had been waiting a while for the treatment to begin. And, that the Respondent did not stop the conversation rather, she kept on talking without listening to the Complainant's explanation.

17) The Complainant stated to the Respondent that because she was pushed to an emotional and mental strain – that was beyond her control, that she, "needed to ask the client to leave the treatment room due to an unexpected circumstance".

18) After which, the Complainant stated that the Respondent rushed to the treatment room, but that she stopped her and asked instead to speak with the client, as the client was expecting the Complainant to return to start the treatment. The situation was then explained to the client, who agreed to leave.

19) Once the client left, the Complainant stated that the Respondent continued on with the conversation with the same topics without giving the Complainant an opportunity to explain anything.

20) The Complainant stated that she went back to the treatment room to prepare it for the next client, and the Respondent followed her there - continuing to have the same conversation.

21) In response, the Complainant stated to the Respondent that, "it was not right to choose and select a particular client and not every client who had not confirmed their appointments and/or made last minute cancellations". "All clients must be fairly treated with respect".

22) The Complainant stated that the situation further pushed her mental and physical stress and mental readiness to work with her next client, so told the Respondent, "I prefer to leave for the rest of the day and will resume back to work after my day off". The Complainant explained that working on a client not being mentally or physically prepared to, could lead to a breach of her duty in the performance of her service – and result in injury or loss (to the client).

23) The Complainant contends that as soon as she left the work place, on Saturday, 22nd, April, 2023, that she was unable to access her accounts in the Booker System due to the Respondent prohibiting access to any of the company apps.

24) On the Complainant's day off, 24th April 2023, the Respondent sent a meeting request for a formal disciplinary meeting. The meeting was to be held the following day.

25) The Complainant felt the meeting – which was to be for open communication – made her question her position in the company; she felt the Respondent did not appreciate her talents and efforts made to contribute to the businesses' growth.

26) The Complainant stated that in the meeting on the 25th April, 2023, the Respondent spoke to her in a derogatory tone; with unclear communications, and as if she were unworthy of being trusted. Further, that she allowed the Respondent to speak uninterrupted. However, that the Respondent did not show the same respect or treat her in the same manner.

27) The Complainant alleged that the Respondent threatened to retain a lawyer to take hostile action against her, and continued to talk over her to maintain power and control, rather than allowing the Complainant to explain her concerns. Further, that the Respondent kept repeating that "she was the boss". To this, the Complainant stated that all she could do was "suffer in silence".

28) While the Complainant stated that the meeting did not go well, and that she was not satisfied how the Respondent handled the meeting, she and the Respondent verbally agreed to work together to create a peaceful environment and work in a respectful manner.

29) The Complainant asked the Respondent to put the agreed upon actions in writing, and for both parties to sign the agreement. It was further agreed that both parties would sign the agreement by 25th April, 2023 – before the Complainant returned to work on Wednesday, 26th April, 2023.

30) The Complainant confirmed that she received the agreement that day from the Respondent and signed it – but, by later that evening, she had not seen/received the Respondent's signed agreement.

31) The Complainant stated that she did instead receive an email from the Respondent asking for the Complainant's input in moving and canceling her clients – as the parties had agreed to insert a 30-minute lunch break for the Complainant on her schedule for Wednesday 26th through Saturday 29th April, 2023 – the week of her return to work.

32) On Wednesday morning, 26th April, 2023, the Complainant stated that she had not received a copy of the agreement, nor did she have access to her work schedule through the Booker System. She emailed the Respondent asking about the agreement, but instead received an email describing what had been discussed and agreed in the meeting of 25th of April – and no response to her request about receiving the signed agreement.

33) Being confused, the Complainant wondered if she should go to work or directly to the Labour Relations Offices, but decided to go to work on the morning of the 26th of April.

34) The Complainant stated that on her arrival to work, she saw the Respondent seated at the computer terminal; she greeted the Respondent and looked for the agreement. The Complainant stated that she did not see the agreement (a piece of paper) by the computer desk. Instead, the Complainant asked again for the agreement, at which time she stated that the Respondent stated that, "I did not sign it because I did not trust you".

35) The Complainant stated that the Respondent went on to discuss things that happened at the previous day's meeting (Tuesday, 25th April), in particular the Respondent's expectations of the Complainant, and that this was not stated in the agreement. Rather, the Complainant's position is that the parties had agreed that any work-related issues would be discussed at a set time, on a weekly basis.

36) The Complainant stated that in spite of this, the Respondent continued on discussing the issues, and did not seem to agree that every effort was made to settle their dispute - even via the signed agreement.

37) The Complainant felt that the Respondent left her in a position where she felt forced to leave the work place against her will because of the Respondent's conduct. And, that by continuing to stay at the workplace meant that the Complainant accepted the Respondent's conduct and unfair treatment. Finally, the Complainant stated that it was very challenging for her to effectively deal with the Respondent to put the agreement into effect in order for the Complainant to return to work.

38) As a result, on the morning of Wednesday, 26th April, 2023, the Complainant told the Respondent that she "needed to seek out help to get the resolution to solve the issues from (the) Department of Labour."

39) The Complainant claimed the Respondent acknowledged her by agreeing that they could no longer work together and that she (the Respondent), was happy to release her.

40) The Complainant stated that she thanked the Respondent then packed her belongings and walked away from the workplace; walking to the Labour Relations office to get advice.

41) The Complainant stated that after she left the Labour Relations Office, she received a "dismissal letter" from the Respondent. Further, on Thursday, 27th April, 2023, she received a reference letter from the Respondent via email; and on Friday, 28th April, 2023, the Complainant received from the Respondent's representing agency: a certificate of termination, a statement of termination letter and a scanned copy of the summary meeting held on the 25th April, 2023.

CROSS EXAMINATION OF THE COMPLAINANT

The Respondent had difficulty following the instruction of the Tribunal, which was to take the opportunity to question the Complainant on the assertions and allegations made in her claim. Instead, the Respondent naturally reverted to defending her actions, statements and positions – in stead of questioning the Complainant. As often and equitably as possible, the Respondent was assisted in rephrasing her statements into questions. As a result, the Tribunal interjected with questions to get clarity on key issues.

42) The Respondent commenced her questioning focusing on the Complainant's assertion that the client at the crux of the dispute had never missed or cancelled an appointment with the Complainant. When asked if there were concerns about the client potentially not showing for his appointment, the Complainant stressed that the client had never missed an appointment. Instead, he would call her to cancel.

43) The Complainant was asked whether a cancellation policy did exist, and if clients received any notice of the company's cancellation policy. The Complainant did not answer the question directly, rather indicated

that (her client) would contact her, and that she had not known the Respondent to send such emails to any other client.

44) The Complainant was asked why she believed the Respondent treated the particular client differently. Again, the Complainant explained that it was not necessary for the Respondent to send the email, nor further explain when the client arrived – because the Complainant managed her own communications; the client had not missed appointments and that it was unnecessary to repeat the policy to the client.

45) The Respondent moved to the claim made by the Complainant that the Respondent waited outside of the treatment door. The Complainant was asked what other treatments and furnishing were in the area of (her treatment room). She replied that there was a retail cabinet and also a manicure station immediately outside the treatment room.

46) When asked by the Respondent (if the Respondent) was sometimes in that area to get supplies or to prepare for manicures, the Complainant replied in the affirmative. Further, could there have been other reasons for the Respondent to be in that area? The Complainant replied yes, that there could have been.

47) For the Respondent to dismiss the charge that she was eavesdropping on the Complainant's conversation with the client, she restated that her reason for coming to the treatment room area was to ask about which of her clients had canceled their lunchtime appointment. The Respondent then asked the Complainant if she told her which client had canceled? The Complainant answered that she told the Respondent that her lunchtime client had cancelled. When asked if the Complainant told her which client, the Complainant repeated that she had told the Respondent in the morning; that the Respondent had acknowledged it, and if she wanted to ask which client had cancelled, that she could have asked the Complainant at that time.

48) The Tribunal interjected to move the questioning of the Complainant to the outcome of the meeting held on the 25th April, 2023; the Complainant was asked what the parties agreed as resolutions at the meeting. The Complainant replied that the staff would have weekly meetings – but not during the work hours so there would be no interruptions to their work; that there would be a respectful working environment; the staff would be allowed flexibility in their scheduling; that there would be teamwork and that the Complainant would receive a 30-minute lunch break.

49) The Complainant was asked how the morning of the dispute started; if there had been any arguments or disagreements prior to the client showing up, to which the Complainant replied that the morning started normal; that there was no arguing or disagreement between herself and the Respondent.

50) The Complainant was asked by the Tribunal whether, up to the date of dispute with the Respondent and from the time that she commenced employment in November 2021, had anything like the dispute happened before, to which the Complainant replied no.

51) The Complainant was asked by the Tribunal if she had received any discipline warnings or documents during the time of her employment to the date of the dispute with the Respondent, to which she replied no.

52) When asked by the Tribunal if she believed the Respondent, as the employer, had the right to contact clients to inform them of policies, schedule changes etc., the Complainant replied yes.

53) When asked by the Tribunal if on the morning of the 22nd, of April when the Complainant left for the day, was it her intention to return to work (after her day off); to this the Complainant replied yes; that she intended to return to work.

54) When asked by the Respondent if she had ever (before the incident) shouted at the Complainant or not allowed the Complainant the flexibility to tend her own schedule, or attend her court hearings, the Complainant replied that she had not been shouted at by the Respondent, and that she had been allowed to manage her own schedule. But, when she left space in the booking/work schedule for breaks, the Respondent would write quotes next to the spots inferring that the Complainant was using her breaks for other things – other than actual breaks.

CASE OF THE RESPONDENT

55) The Respondent's position is that the Complainant proved herself to be a professional from the start of her employment at Xxxx. Such characteristics allowed for the Complainant to be provided with independence; given two accounts in the company's Booker System – which allowed her to manager her own schedule, including cancellations and bookings, and whether she took breaks. The Complainant had also been provided with her own massage room and new massage table – which the Complainant chose.

56) The Respondent claimed that she trusted the Complainant completely; as such she was allowed to work unsupervised. But, during the year 2023, the Respondent noticed that the Complainant had become dismissive of the Respondent and began speaking to her in a surly manner – which the Respondent did not address. The Respondent noticed that the Complainant was becoming remote and unapproachable – so wanted to learn if there was anything (the Respondent) could do.

57) On 17th February 2023, the Respondent wrote to her two employees, thanking them for their work and inviting both to provide her with feedback for improvements and for the businesses' growth. The Respondent's letter acknowledged that as a business providing articulate quality of service, that the employees could be feeling pressure, so requested any thoughts or ideas to make their experience with Xxxx more fulfilling. The Respondent provided examples of where feedback could be considered, including getting assistance with reception and laundry duties and increasing prices on high demand treatments. The stated objective of the request for feedback was to ensure the employees could remain happy and fulfilled in their roles.

58) The Complainant's feedback was that "everything was fine", and the Respondent was reassured that there was nothing wrong.

59) The Respondent stated that the three of them made a strong team, and that she was proud to promote the business. Further, that she encouraged the staff in their chosen areas of expertise so clients could continue to be assured quality service.

60) The Respondent noted that the Complainant seemed to incur stress around the times of court appointments involving a personal matter. And, just prior to a May 2023 court date approaching is when the situation with the client's booking and the cancellation dispute occurred.

61) The Respondent stated that on the morning of 21st April, 2023, the Complainant pointed out that the client would most probably not show (on the 22nd of April) because he had missed several appointments. The Respondent said that she was unaware of that; and as it had been drawn to her attention and having concern for the Complainant – she emailed the client regarding the cancellation policy and blind copied the Complainant.

62) The Respondent insisted that this occasion regarding this client was the first time that the Complainant had pointed out a client for not showing up. Further, it was also the first time that the Respondent had sent such an email and blind copied a therapist – in this case the Complainant.

63) The Respondent said in so doing – she was encouraged to contact every client on that day, 22nd April, 2023 to confirm their appointments for the day.

64) The Respondent stated that it was standard practice for all clients to receive an automated email to confirm their appointments three (3) days prior to their sessions. That in the email sent to the client and others – that the cancellation policy was also clearly shown.

65) The Respondent stated that when the client in question arrived on the morning of the 22nd of April, that she greeted him as normal and stated to him, “that she hoped the email had not upset him”. She stated that the client answered that everything was fine, and they chatted while waiting for the Complainant to collect him for his treatment.

66) The Respondent stated that it was at the time of coming to collect the client that the Complainant informed her that her “lunchtime client” had cancelled. But, the Complainant had not deleted (which client) had cancelled, nor, the Respondent stated, did the Complainant tell her which client had cancelled. The Respondent stated that she had a client at 12PM and a client at 1PM. As it was approximately 11:00AM, she needed to know which one had cancelled.

67) The Respondent stated that she waited beside the retail cabinet for the Complainant to exit from the treatment room where she had taken the client.

68) The Respondent described the area as where both a retail cabinet and manicure station existed outside of the Complainant’s treatment room. The Respondent explained that the area was not a restricted area where she should not be.

69) The Respondent stated that when the Complainant exited the treatment room, she began shouting at her. The Respondent described the Complainant’s behavior as explosive; further stating that she was only in the area awaiting the Complainant to exit the room (while the client prepared for his treatment) to know which of her clients had cancelled.

70) The Respondent stated that she was followed by the Complainant to the reception area, and as the Complainant was still shouting at her, she too raised her voice, stating that she only wished to know which of her clients had cancelled.

71) Once at the reception area, the Respondent stated that the Complainant continued shouting, asking her why the Respondent was treating the client so badly; and while pointing in the computer, the Complainant was said to have asked repeatedly whether (each client pointed at in the Booker System) had been confirmed. Further, that the Complainant stated that she had been approached by a company of more than 300 employees to do their massages and did not want to share them with the Xxxx.

72) The Respondent stated that her reply to the Complainant was that all of the clients for that day had received a call from her to confirm (their appointments).

73) The Respondent stated that the Complainant then told her that she could not work under the stressful conditions and that she would go home for the day.

74) The Respondent replied that she would inform the client, but the Complainant said that she would.

75) The Respondent stated that she remained at the reception desk while the Complainant went back to the treatment room to release the client. Further, that once the client left, the Complainant left as well – leaving the Respondent to call the Complainant’s clients and cancel them for the day.

76) The Respondent stated that as a result of the Complainant screaming and shouting in "an unusual manner" on the day in question, she decided to call a meeting with the Complainant to resolve the matter.

77) On 24th April, 2023 at approximately 11:15 AM (the Complainant's off day), the Respondent emailed the Complainant to arrange a formal meeting with the Complainant, before she returned to work. The meeting was referred to as a formal disciplinary warning. The Complainant was informed via the email that if she could not attend the meeting, then she could not return to work. The Respondent offered to cancel the next day's (appointments) to allow time for the meeting – if the Complainant was not heard back from – or if she was unable to meet on the 24th of April, 2023.

78) The Complainant replied the same day at 12:01PM, thanking the Respondent for the email, but asking her to respect that (that day) was her day off. However, the Complainant agreed to have her appointments cancelled so that she could attend the meeting to discuss what occurred on Saturday, 22nd April, 2023.

79) The Respondent stated that the Complainant was told at the start of the meeting that the objective was to draw clear lines. Further, that the Complainant was reminded that she was an employee of Xxxxx– and that the clients that were coming to the Xxxxx were not the Complainant's clients rather, clients of the Respondent's business.

80) The Respondent stated that she informed the Complainant that she, (the Respondent) would call all clients for confirmation; that it was not acceptable for the Complainant to ask clients to call her directly; reminding the Complainant that as a small company, the staff should treat each other with respect.

81) The Respondent raised the matter of the Complainant's complaints regarding her lunch breaks and reminded her that she (the Complainant) was in charge of her own scheduling. The Respondent stated to the Complainant, that when she (the Respondent) blocked lunch breaks for the Complainant, the Complainant filled them in.

82) The Complainant was reminded in the meeting of the 17th February, 2023 that when she was asked for input (to make the work environment/business better), the Complainant did not respond in a sincere way. Further, that while the Respondent was allowing the Complainant flexibility in her in scheduling – she stated to the Complainant that it did not mean that the Complainant could speak to her in such a disrespectful way.

83) The Respondent explained that the objective of the meeting held on the 25th of April, 2023 had been met. The objective was to resolve the "walkout" on Saturday, 22nd April, 2023. That the meeting had been tape-recorded by both parties and attended by the Director of the Company (the Respondent's spouse), who acted as an observer. The meeting started at 10AM and concluded at 11:40AM.

84) The Respondent confirmed that the key complaints by the Complainant had been addressed and agreed by both parties. Primarily, that the Complainant would receive a 30-minute lunch break. That the Complainant would continue to have flexibility in her schedule to attend to personal matters. Moreover, that the Respondent would manage customers to Xxxxx, including confirming client's appointments, and that the Complainant would respect users of the Booker System.

85) The Respondent stated that at the conclusion of the meeting on the 25th of April, 2023, that she typed the resolution and sent it to the Complainant for her signature. That she too signed the agreement on the same day of the meeting and that she handed the letter to the Complainant when she came to work the next day, 26th April, 2023.

86) The Respondent stated that although the Complainant arrived to work on the 26th of April 2023, the Respondent was left stunned when the Complainant collected her belongings and left. At the time, the Complainant was fully booked over the next two-months' period.

87) The Respondent sought advice from an employment agency/consultant, who sent the Complainant "self-termination" documents, and offered the Complainant the opportunity to speak with them.

88) The Complainant did not speak with the agency/consultants nor did she return to work. As a result, the Respondent had the agency send the termination documentation to the Complainant, and she released the Complainant from her work permit.

CROSS EXAMINATION OF THE RESPONDENT

89) The Respondent was asked by the Complainant, if it was normal for the Respondent to copy therapists on emails when cancelling clients?

90) The Respondent answered yes; that she had also copied the other therapist when reminding (her) clients of the cancellation policy – when the therapist raised it as a concern. Adding that the Complainant however, did not often bring her complaints to the Respondent.

91) The Respondent said that she copied the Complainant in this case, because the Complainant had raised the concern with her on the morning of the 21st, April, 2023.

92) The Complainant asked the Respondent if she stood outside of her treatment room door, to which the Respondent replied that she stood at the retail cabinet.

93) When asked if the Respondent followed the Complainant, raising her voice, the Respondent replied that she raised her voice once back at the receptionist desk and in response to the Complainant pointing at the clients in the computer and asking if each one had been called to confirm their appointments.

TRIBUNAL QUESTIONING OF THE COMPLAINANT

94) The Tribunal asked the Complainant if she believed that the Respondent (as the owner/ operator/ manager) of the business, had the right to contact clients for whatever reason she saw fit. The Complainant agreed.

95) The Complainant was asked if she informed the Respondent that her 12:00PM client had cancelled. The Complainant replied that she told the Respondent that her "lunch time client" had canceled.

96) When asked about references to the "300 employees" (at a company that she had been asked to provide massage services for), the Complainant confirmed that she had received this request to her own personal email, but yes, she did mention this topic to the Respondent.

97) Regarding the agreement from the 25th April meeting – which was to be signed before the Complainant could return to work, the Complainant was asked, did she receive the signed agreement on the morning of the 26th of April, as the Respondent testified. The Complainant responded that she did not; stating that the Respondent was finishing the letter when she arrived to work.

TRIBUNAL QUESTIONING OF THE RESPONDENT

98) The Tribunal asked the Respondent, at what point did she view the Booker System to determine which of her clients had cancelled. The Respondent replied that she saw the bookings after the Complainant informed her, and as she was going to her treatment room. She stipulated that this is why she went to wait for the Complainant to come out of her treatment room (while the client was preparing for his treatment); and, because the Complainant did not often return to the reception area after collecting her clients.

99) The Respondent was asked, did she sign and provide the Complainant with the agreement as stated in the meeting of the 25th April, 2023. The respondent replied that she completed the agreement the day of the meeting of the 25th of April, and had the agreement on the desk for the Complainant to retrieve when she arrived to work on the 26th April, 2023.

100) The Respondent stated that she handed the signed agreement to the Complainant.

CLOSING STATEMENT BY THE COMPLAINANT

101) The Complainant told the Tribunal that she did not have any intentions to leave her employment or to resign, but felt that she was forced to due to circumstances that took place at work. She continued that she did not think that the solutions would work. And, while she did not have any warnings etc., from the Respondent during her employment, she did not think she could find trust with the Respondent.

CLOSING STATEMENT BY THE RESPONDENT

102) The Respondent explained that she tried to give her staff everything they needed. And, when she interceded by sending the client an email explaining the cancellation policy – that she was doing so to support the concern by the Complainant. The Respondent stated that the day of the situation was such a shock to her, that she felt she had to call the Complainant back to work to resolve the matter. Further, that she wanted the Complainant to see how the matter had been resolved, and handed the agreement to the Complainant on the morning she returned to work; and that the Complainant accepted it. The Respondent said that she was then stunned when the Complainant walked out - (believing) that she was leaving the business, not that she was going to Labour Relations. The Respondent concluded that it made sense for her to do everything she could to keep the Complainant, and would have been happy to take her back.

THE RESPONDENT'S CHARACTERIZATION OF, AND TREATMENT OF THE COMPLAINANT

104) At the time of the situation that occurred on 22nd April, 2023, the Complainant had been employed with Xxxxx for approximately 17 months – as of November 2021. And, during that time, as both the Complainant and the Respondent testified – the working relationship between the parties was respectful and professional.

105) In the Respondent's testimony, a descriptive summary of the Complainant as outlined in clauses 55 through 57 states as follows: The Complainant proved herself to be a professional from the start of her employment at Xxxxx. Such characteristics allowed for the Complainant to be provided with independence; given two accounts in the company's Booker System – which allowed her to manager her own schedule, including cancellations and bookings, and whether she took breaks. The Complainant was trusted completely; as such she was allowed to work unsupervised.

106) The Complainant was provided access to the Booker System as a reservationist because she was often working alone and needed to book appointments for the Respondent and the other therapist. Access as an "admin" enabling the Complainant to have access to all client details and therapists' schedules, and, access as to a personal account as "Xxxxx", for her personal schedule of clients – which was set up when the Complainant first started with the company.

107) The Respondent testified that the Complainant was also allowed a large degree of flexibility in managing her own schedule to allow for her to attend to personal, family matters.

108) On the eve of the 22nd of April, 2023, the day before the dispute occurred, the Respondent testified that the only reason she contacted the Complainant's client, was because the Complainant expressed concern that the client "would likely not show up", because he had missed several appointments.

109) The Respondent stated that the contact of the Complainant's client on the 21st April, 2023, and copying the Complainant, was the first time she had done so. And, that this was done out of concern for the Complainant.

110) The Respondent confirmed that the morning of the 22nd of April, 2023, (as did the Complainant), that the morning was normal, and that nothing had occurred that would cause the Complainant to become explosive to her when the Complainant exited her treatment room and confronted the Respondent.

111) The Respondent explained in her testimony clause 56, that she trusted the Complainant completely. Further, as stated in clause 98, that she waited outside of the Complainant's treatment room to seek clarity on which of her lunchtime clients had cancelled, and not to listen to the Complainant's conversation with her client.

112) After the client was released, and after the Respondent insisted to the Complainant that all of the days' clients had been contacted to confirm their reservations, the Respondent did not stop the Complainant from leaving for the day, and proceeded to cancel the Complainant's clients. And, as testified to in the Respondent's closing statement, that the day's events were a shock to her, that the Respondent felt she had to call the Complainant back to resolve the dispute.

113) The Respondent was clear with the Complainant that the objective of the meeting held on the 25th April, 2023, was to draw clear lines. The Complainant was reminded that she was an employee of Xxxxx- and that clients coming to the Xxxxx were not the Complainant's clients rather, clients of the Respondent's business.

114) The Respondent made clear that it was she who would call all clients for confirmation, and that it was not acceptable for the Complainant to ask clients to call her directly; reminding the Complainant that, as a small company, the staff should treat each other with respect.

115) Finally, the Respondent raised the matter of the Complainant's complaints regarding not being provided lunch breaks, and reminded her that she, (the Complainant) was in charge of her own scheduling. The Respondent stated to the Complainant, that when she (the Respondent) blocked lunch breaks for the Complainant, the Complainant filled them in.

116) However, the parties agreed that effective immediately, the Complainant would have scheduled lunch breaks of 30 minutes, and that she would continue to have access to the Booker System to schedule, confirm or cancel clients.

117) Ultimately, the Respondent agreed with the Complainant on the resolution items and presented the agreement to the Complainant for her to sign - on the same day of the 25th April meeting. And, further, the Respondent had the agreement prepared and signed to hand to the Complainant when the Complainant arrived to work on the morning of the 26th of April, 2023.

THE COMPLAINANT'S CHARACTERIZATION OF, AND TREATMENT OF THE RESPONDENT

118) At the time of the dispute that occurred on 22nd April, 2023, the Complainant had been employed with Xxxxx for approximately 17 months – as of November 2021. And, during that time, as both the Complainant and the Respondent testified – the working relationship between the parties was respectful and professional.

119) In the Complainant's opening testimony, she stated that it was very important that the employer and the employee had trust and respect and maintain a professional relationship for maximum productivity and workplace satisfaction. Further, that the employer and the employee should respect the right to privacy, confidentiality and security of personal information of the clients; included but not limited to personal information of the employer and employee. Without it, the relationship could go wrong and become a difficult situation to build and maintain a healthy relationship in the workplace.

120) The Complainant stated that the Respondent did not implement a cancellation policy, plainly and clearly or in intelligible language on the company's website or software.

121) Regarding the client at issue and the Respondent's treatment of the client – the Complainant stated that the Respondent "chose to" contact this particular client by sending a direct email in regards to the cancellation policy, but not to all the clients who cancelled, were no shows or (who had not) confirmed their appointments; and it appeared that Respondent's decision was obviously biased against a particular client.

122) The Complainant made clear the history of the client's attendance at Xxxxx, stating that the client never had any history of no-shows; never late for an appointment, and always arrived on time or 10 minutes before his appointments. That when he was unable to make the appointment, he would usually send her an email or call her a day in advance to reschedule the appointment.

123) It is the Complainant's position that, because the Respondent contacted the Complainant's particular client – that the Respondent did not demonstrate fair treatment and respect of the client.

124) The Complainant accused the Respondent of listening to her conversation during the consultation with her client; and stated that the Respondent's action clearly showed disrespect. The Complainant stated that in that time period, that the Respondent continued to talk without listening to the Complainant's explanation. And, that the ensuing talking of the Respondent pushed her to emotional tension and mental strain – beyond her control.

125) The Complainant stated that, by the Respondent following her back to her treatment room to prepare for her next client – and continuing to talk and discuss the same topic, left her unable to mentally prepare for the next client. As a result, the Complainant stated that it pushed her emotional tension and mental strain even further.

126) The Complainant stated that she again told the Respondent that it was not right to choose and select a particular client and not every client who were not confirmed for their appointments or who made last-minute cancellations; that all clients must be treated fairly and with respect.

127) The Complainant stated that as soon as she left the workplace on 22nd April, 2023, that she was unable to access her accounts through the Booker System to see her on-line schedule, due to the Respondent prohibiting her access, and with no notification of this from the Respondent.

128) Upon receiving an email on 24th April, 2023, from the Respondent, the Complainant reminded the Respondent to respect her time, as the email was sent on the Complainant's day off. Within the Complainant's reply and with reference to the dispute on the 22nd of April, 2023, the Complainant agreed to have the formal meeting with the Respondent to address what the Complainant termed as "unacceptable and would not be tolerated"; allowing the Respondent's manners to interfere with her work while she was with her clients.

129) With continued reference to the Respondent's treatment of the Complainant, in the same email reply by the Complainant, she stated that not only the Respondent would take action against her, but that she would also take action against the Respondent. Asking the Respondent to think carefully of the times over the years of the Complainant's work history – the lack of breaks she had; whether the disciplinary warning was reasonable (based on) how the Complainant and her client was treated.

130) The Complainant stated that she did not receive the signed agreement from the Respondent – either the same day of the 25th April meeting or the morning of the 26th of April, when the Complainant returned to work. The Complainant testified that when she asked for the agreement on the morning of the 26th April, the Respondent stated that she had not signed it, because she did not trust the Complainant.

DELIBERATION OF THE TRIBUNAL

131) The Tribunal considered the requirements for a constructive dismissal claim, and what an employee needed to prove to succeed in their claim. As a result of its findings, the Tribunal focused its deliberations on the following criteria:

a) Whether the asserter of constructive dismissal, the Complainant, had provided proof that the Respondent had seriously breached the contract of employment through her conduct, and that the Complainant resigned because of that breach; and/or,

b) Whether the Complainant had demonstrated through her testimony (based on her statement of claim), that the working conditions were intolerable, causing her to resign against her will; and/or,

c) The Last Straw Doctrine: Whether the Complainant experienced a final straw act in a series of acts by the Respondent, whose accumulative effect amounted to a breach of the implied terms of trust and confidence on which the Complainant had relied.

132) Was the Respondent's conduct of such a gravity to seriously breach the implied trust and confidence of the Complainant?

133) The Complainant's case rested on her claim, that a) By the Respondent contacting a client of the Complainant to remind him of the company's cancellation policy – when the policy was not clearly visible, and blind copying the Complainant in the process; and continuing to engage the client on the same topic once he arrived, and b) Standing outside of the Complainant's treatment room, listening to the conversation between the Complainant and her client, was unprofessional conduct by the employer. And, that because of this conduct, the client had to leave his treatment.

134) The Complainant further asserts that: c) the Respondent denied her access to the Company's booking system once she left on the day of the dispute. Further, that: d) in calling for a discipline meeting while the Complainant was having a day off, was disrespectful of the Complainant's privacy and her time. In the disciplinary meeting held by the Respondent, the Complainant's position was that: e) she was not listened to; was talked over and spoken to in a derogatory manner, and was made to feel as if she could not be trusted.

135) As a result of the disciplinary meeting – where a resolution was formed, the Complainant asserts that even though it was agreed that both parties would sign the agreement before the Complainant was to return to work on the 26th April, 2023, that f) the Respondent did not follow through and was said to have stated, that she did not sign the agreement because she did not trust the Complainant.

136) In the Complainant's response to the Respondent's Statement of Defense – the Complainant further claimed that g) the workload was excessive, and that the Respondent was aware of it. However, both parties testified that the Complainant was in charge of her own scheduling; booking and cancellations. Additionally, that the Respondent, in her email to the Complainant, sent on 17th February, 2023, acknowledged that because the business was striving to provide articulate and quality service that there was realization that (the Complainant) might be experiencing pressure to do everything. The Respondent sought thoughts and ideas on how (she) could make the Complainant's experience with Xxxxx more valuable and fulfilling. The Respondent testified that when feedback was sought from the Complainant, the Complainant stated that everything was fine.

137) The Complainant states in her reply to the Respondent's Statement of Defence, regarding her charge of an excessive workload, that while the Respondent did ask for feedback, that she "found it hard and fearful to go to the employer with this fact about the excessive workload, but responded to the employer when asked for advice/opinion."

138) The Tribunal was not presented with evidence by the Complainant that showed an excessive workload - and by comparison - a normal workload. The Tribunal saw no indications during the Complainant's testimony and her cross-examination of the Respondent – that she was fearful of expressing herself to the Respondent. On the contrary, the Tribunal witnessed the Respondent being overwhelmed by the aggressiveness and challenging nature of the Complainant.

139) The Tribunal reasoned that if the workload was excessive, it was at the hands of the Complainant – who demonstrated through her testimony that she managed her scheduled – which included telling the Respondent that, "she had no right to contact the (Complainant's) clients".

140) Finally, the Complainant stated that the meeting held on the 25th of April 2023 had been recorded by both parties. And, the conversation between the parties on the day of the 26th of April, 2023 had also been recorded. However, of the latter conversation – the Complainant did not state who recorded the conversation.

141) The Tribunal determined that the matter at the heart of the dispute as laid out in clause 5 and clause 133 - was the Respondent's prerogative. As the owner and manager of Xxxxx, the Respondent had the right to not only advocate on behalf of the Complainant by contacting the client, but also establishing herself as the authority of the business on the day in question. The Tribunal reasoned that by copying the Complainant on the correspondence to the client, that action was transparent and within the service of the keeping to the company's protocols. By the Complainant's own statements, it was she who began the confrontation with the Respondent upon exiting the treatment room and accusing the Respondent of listening to her conversation with the client. Again, by the Complainant's own statements – that the client "sat relaxed" and that it was she who continued the matter with the client in the treatment room by discussing and "apologizing" for the Respondent's behavior. This action alone, by the Complainant, contradicts her charge that it was the Respondent's conduct that was unprofessional rather, the Tribunal determined that it was the Complainant's conduct that was unprofessional.

142) It was the Respondent who provided evidence to negate the charges by the Complainant, that she held a bias against the Complainant's client – by treating him differently and with disrespect by only contacting him, and not the other clients booked for that day. The Complainant was shown in the Booker System that all clients for the day of the 22nd April, 2023 had been contacted by the Respondent. The Respondent's evidence also showed that the company's cancellation policy was clearly shown on replies to clients. And, the Complainant provided no evidence to support her charge that she was denied access to the booking system upon leaving the day of the 22nd April, 2023. Contrary to this charge, the Respondent provided evidence that access to the Complainant's account was closed out by the Respondent on 27th April, 2023, one day after the

Complainant left the employ of the Respondent. Further, that upon realizing – 5 days later that the Complainant still had access to the second account as an administrator, the Respondent closed off access.

143) While the Complainant took issue with being called to attend a disciplinary meeting on her day off – the Tribunal reasoned that the Respondent had no choice but to deal immediately with the Complainant walking off the job on the 22nd April, 2023, but also to deal with the conduct of the Complainant. By admission of both parties – the relationship between the parties to the day of the dispute was professional; both further agreed that there had been no disciplinary actions against the Complainant in the approximately 17 months of her employment.

144) As stated in Clause 140, the Complainant provided no tape recording of the disciplinary meeting to support her claims that she was not listened to; spoken to in a derogatory manner; or made to feel as if she could not be trusted. This claim goes to the heart of the Complainant's charge that the Respondent's conduct breached the implied trust and confidence of the Complainant, and indeed, in the workplace. Conversely, it was the Respondent who provided a portion of the transcript of the meeting in which the tone was reflective of a disciplinary meeting, and in which the Complainant focused the majority of the meeting on the Respondent's alleged treatment of the client on the day of the dispute, and with key references made to the Complainant's charge of not being provided a lunch break.

145) As a result of reviewing the portion of the disciplinary meeting transcript, the Tribunal reasoned as follows: That where the Respondent continuously asserted herself as "the boss", was as a necessity in coming to terms with managing an employee who consistently challenged the Respondent's authority and her right to manage her business as she saw fit. Evidence of the Complainant's challenging demeanor was witnessed throughout her testimony and seen throughout the provision of her Statement of Claim and in her reply to the Respondent's Statement of Defense. Further, that over the 17 months of the Complainant's employment, she had amassed a huge clientele which she asserted were, "her clients to contact" – not the Respondent's. The Tribunal reasoned, that the Complainant's behaviors were insubordinate; and her actions bordered on soliciting clients – as the client at the crux of the dispute was numerously referred to by his first name, by the Complainant in the disciplinary meeting on the 25th of April, 2023. This behavior was observed by the Tribunal as over-familiarity by the Complainant, and seen to be putting herself on the same plain of authority in managing her clients, as the Respondent. As such, The Tribunal determined that the Respondent had no choice but to "draw clear guidelines" – as was the stated objective of the meeting on the 24th April, 2023.

146) The Complainant's position as stated in clause 134, e), regarding not feeling trusted was addressed by writing a Resolution Agreement subsequent to the disciplinary meeting held on 25th April, 2023. For the agreement to be successful, the actions of both parties had to be congruent and demonstrated. The themes addressed in the agreement to which the Complainant agreed were:

- To build trust and to speak to each other in an appropriate tone and manner; weekly meetings would be held to build trust and respect for each other;
- To have harmony and peace in the workplace, the parties would give each other space and save concerns for meetings;
- To be allowed to focus on clients without interference (from the Respondent), and for the Respondent to be informed when there are concerns;
- The Complainant was to be provided a 30-minute lunch break;
- For the Complainant to continue to have access to the booking system in order to make her personal appointments and to deal with her personal matters;

- Respect the Respondent's right to manage clients via the Booker System, but continue to allow access to the system for the Complainant to manage her clients.

147) The Tribunal determined that by walking out on 26th April, 2023, the Complainant gave no opportunity for the agreement to come to fruition, even though it was the Complainant's conduct on the day of the dispute that led to the necessity of the Respondent having to produce an agreement; to claim her authority in the workplace and to ensure peace and harmony in the workplace.

148) The Complainant charged in her reply to the Respondent's Statement of Defence, that on the morning of the 26th April, 2023, when the Complainant came back to work, "as predicted" the Respondent did not seem to agree that every effort was made to settle the agreement. Further, that the Respondent did not have the agreement ready or signed for the Complainant, because when asked for it by the Complainant, the Respondent was alleged to have said, "I did not sign it because I don't trust you." Finally, disagreeing with the Respondent that it was not handed to her.

149) The Tribunal could not accept the Complainant's testimony that it was this matter (not having a signed agreement and the Respondent continuing the discussion against the agreement) that made the Complainant decide that she was forced to leave against her will. Because, in the Complainant's reply to the Respondent's Statement of Defence, she stated that the meeting of the morning of the 26th April, 2023, was tape-recorded, yet she provided no evidence to support her claim that a) the Respondent did not provide her with the signed agreement; b) the Respondent continued to engage in discussions from the previous day's meeting – and moreover to the heart of the Complainant's charge, c) that the Respondent's conduct on the morning of the 26th April, 2023, led to breach of implied terms of trust and confidence.

150) The Tribunal reasoned that it was illogical for the Respondent to not fulfill her part of the agreement - in signing it and having it prepared for the Complainant on the day she returned work. This is because the Respondent previously testified that she had every reason to keep the Complainant employed. That the Complainant had proven herself to be very trustworthy, and had built up a huge clientele. And, at the time of her walking out of the company, that the Complainant was fully booked for two-months.

151) The Respondent, as the owner, manager and employer of Xxxxx testified that the Complainant was a popular therapist; and that she was proud to promote the Complainant and her services. She further testified that the Complainant was provided her own access accounts to the Company's booking system; allowing the Complainant – from the start of her employment in November 2021 – to book, schedule, cancel and confirm clients. The Respondent further testified that the Complainant was given her own treatment room, and a massage table (chosen by the Complainant), was also purchased for the Complainant. The Respondent was consistent in her statements regarding allowing the Complainant the flexibility in her schedule to attend to her personal matters. The Complainant was trusted completely; as such she was allowed to work unsupervised.

152) The Respondent stated that even though in 2023, that the Complainant had become dismissive of the Respondent and began speaking to her in a surly manner – the Respondent did not address her behavior. The Respondent further noticed that the Complainant was becoming remote and unapproachable, and was also often overheard on her cell phone speaking loudly and shouting while in the xxxxx. Again, the Respondent did not address the behavior rather, surmised that the Complainant was experiencing anxiety due to personal matters.

153) The Respondent testified that on the morning of the dispute of 22nd April, 2023, there was no dispute, or argument of any kind between herself and the Complainant. Moreover, that in the (approximately 17 months of the Complainant's employment) had there ever been. At the time of the client's arrival and ushering to the treatment room, the Respondent testified that the client had no problem with the cancellation policy

email, nor the conversation with the Respondent that morning. As such, the environment remained conducive for the client to receive his treatment. The Respondent testified that the "explosive" behavior of the Complainant occurred when the Complainant exited her treatment room, and confronted the Respondent.

154) The Tribunal determined that the Respondent, as the employer, reasonably managed her business; and reasonably conducted herself and the management of all the circumstances – prior to, and post-dispute.

155) Did the Complainant demonstrate through her testimony (based on her statement of claim), that the working conditions were intolerable, causing her to resign against her will?

156) Other accusations made by the Complainant in her reply to the Respondent's Statement of Defense – to support her claim that the working conditions were intolerable, causing her to resign against her will included:

- h) Misaligned workplace culture;
- i) Excessive and cognitive workload;
- j) No acknowledgement by the Respondent of her dedication to her job;
- k) Disruptions to her job, by the Respondent;
- l) Micromanagement;
- m) Inconsistent instructions.

157) The Complainant provided no evidence to support the claims made above. The Tribunal further rejects that it was the Respondent who caused the Complainant's workload to be excessive, and that the Respondent did not acknowledge the Complainant's dedication to her job. Acknowledgement was shown in evidence of the email dated 17th February, 2023, in which the Respondent made further suggestions to lighten the load of the Complainant by seeking a receptionist and purchasing a new laundry system. Finally, as stated to the Complainant in the disciplinary meeting of the 25th April, 2023, the Booker System was purchased by the Respondent so that clients would be able to book on line and confirm their appointments on line. And, that the Respondent would take on the responsibility of calling clients to confirm their appointments.

158) Therefore, the Tribunal reasons that all attempts were being made by the Respondent to alleviate the Complainant's workload.

159) Did the Complainant experience a final straw act in a series of acts by the Respondent, whose accumulative effect amounted to a breach of the implied term of trust and confidence on which the Complainant had relied?

160) The Complainant focused her claim on the events of the 22nd April, 2023 as being the first issue that caused the dispute between the parties – which allowed her to claim that the Respondent's behavior was unprofessional. Additionally, that she was not provided adequate lunch breaks, charging that the Respondent overworked the Complainant. And, after the parties agreed to sign an agreement of mutual benefit to the parties – that the Respondent did not sign it, causing the Complainant to charge mistrust of the Respondent – thereby feeling that she had no choice but to leave the employment of the Respondent against her will.

161) In determining whether the events over the period of the 22nd April, 2023 through to the 26th of April, 2023 constituted a series of acts in the accumulative, or that any one of those acts constituted the "final straw", the Tribunal needed to examine the Respondent's behavior, conduct and obligations to the Complainant – based on the reasonableness of the Respondent as an employer in addressing the Complainant – during the events of 22nd April through 26th April, and examining the conduct of both parties during the extent of the Complainant's employment, November 2021 through April 2023.

162) The Tribunal determined that in all the circumstances as presented by the Complainant – that the Respondent acted in a reasonable manner and within the customary role of an Employer.

163) Of the dispute on the 22nd, April, 2023, the Tribunal determined that the Respondent had a right to conduct her business as she saw fit, and did not require the Complainant's permission to do so. That the Respondent responded to the Complainant's explosive behavior as the Complainant charged that she did – appeared to the Tribunal to be uncharacteristic of an "employer" whose business it is to provide a peaceful and harmonious environment in which to host and care for her clients.

164) Of the decision to call the Complainant in for a disciplinary meeting – to "draw clear guidelines" – was also seen by the Tribunal as reasonable behavior for an employer recognizing that the time had come to address the employee's conduct in the workplace.

165) That the Respondent wished to reach an agreement by mutual consent, rather than present the Complainant with a written warning or any other manner of discipline, indicated to the Tribunal that the Respondent was attempting to follow the principle of progressive discipline – in which any manner of coaching or counseling to address an employee's behaviors or conduct would be acceptable.

166) The Tribunal placed no weight on the Complainant's claim that the Respondent did not sign nor present her with a signed agreement. The Complainant would have been within her rights to not attend work until receiving the agreement – as the parties had agreed. Instead, the action that the Complainant chose was to collect her belongings and leave. In so doing, the Complainant did not give the opportunity for the agreement to commence.

167) The Tribunal was presented with the "renewal contract" for the Complainant. The contract was dated 24th October, 2022, approximately one-year after the Complainant had been first employed with Xxxxx. The salutation was as follows:

Dear (Complainant),

"We would like to renew your position of Beauty Therapist. We are happy to see you flourish and grow within the company".

168) The body of the contract outlined the Complainant's duties and included a notice period of two weeks. The renewal contract was signed by the Complainant, thereby accepting the terms of the contract – specifically: the list of duties the Complainant would be responsible for, and the 2-weeks' notice period.

169) The Tribunal's final consideration was based on the fact that the Complainant had one year of employment with the Respondent before the renewal of the contract was presented to her. And, within that one year – the Complainant had a probationary period in which she had an opportunity to make a decision to remain with the company or leave. And, as a work permit holder, the Complainant had an opportunity to make a lawful decision to leave the employ of the Respondent. Further, that when the Complainant believed that the environment or the Respondent's conduct was no longer tolerable, the Complainant needed only to give the Respondent two-weeks' notice and then, resign.

170) The Respondent acknowledged in the salutation of the contract that: (she) was happy to see the Complainant flourish, indicating that the Complainant's clientele was growing quickly - as the Complainant stated in her reply on page 1 - to the Respondent's Statement of Defence: "Within the shortest time, I was able to build my own clientele".

171) The Tribunal concluded its deliberations by visiting the Respondent's opening statement, that said, "I understand that when a Beauty Therapist becomes very popular, they may choose to move on. And, in April

2023, (the Complainant) told me she had decided to leave us and that she could no longer work at Xxxxx." "She expanded that she had been approached by a company with up to 300 employees, and she did not want to share the work with (our) company." "I told her that we did not wish to terminate her employment, but I understood and could offer her a release letter if she chose to move on."

DETERMINATION OF THE TRIBUNAL

172) Having given the parties full opportunity to present evidence and make submissions, it is the Determination of this Tribunal that the Respondent has offended the following sections of the Employment Act:

Section 6, Statement of Employment; Section 12, Vacation; and Section 20, Notice Period

173) As was determined in the Inspector's findings dated 24th June, 2023, the Tribunal finds that the Respondent has offended the following parts of Section 6: Statements of Employment:

6 (2) (b) Providing a written Statement of Employment indicating the start date of employment;

6 (q) The Employer's written policy against bullying and sexual harassment in the workplace;

6 (n) Any dress code;

6 (3) That where there are no particulars to be entered in reference k to o of subsection 2 – that this is to stated;

6 (4) That where particulars do not exist – that the Statement of Employment may refer the employee to any collective agreement which directly affects the terms and conditions of his employment;

174) As was determined in the Inspector's findings dated 24th June, 2023, the Tribunal finds that the Respondent has offended Section 12 – Vacation Leave.

175) Section 20 – Notice Periods: The Tribunal finds that although the original offense of not including a notice period in any format to the Complainant is upheld, subsequently, a notice period of 2 weeks is listed in the renewal contract for the Complainant which is dated 24th October, 2022.

Section 29 – Constructive Dismissal

176) Pursuant to Section 29 (1) 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; and,

177) Pursuant to Section 29 (2) An employee who terminates his contract of employment pursuant to subsection (1) shall be deemed to have been unfairly dismissed for the purposes of the Employment Act 2000.

178) The Tribunal finds that the Complainant's claim that she was constructively dismissed is not proven, therefore is not upheld.

It is therefore the Order of this Tribunal that:

179) Pursuant to PART V – ENFORCEMENT, subsection 44M of the Employment Act 2000 provides the Tribunal with the power to impose a civil penalty, as the Tribunal sees fit, where a person contravenes a provision of the Employment and Labour Code.

Signatories of Tribunal Members

**Lorrita J. Tucker
Chairman**

Lorrita J. Tucker

**Derrick Burgess
Deputy Chairman**

Derrick Burgess

Judith Hall-Bean

Judith Hall-Bean

Date: July 8th 2024

