

**IN THE MATTER OF A DISPUTE UNDER THE TRADE UNION AND LABOUR RELATIONS
(CONSOLIDATION) ACT 2021 (the Act)**

BEFORE THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL

BETWEEN:

Applicant

-and-

Respondent

Members of the Tribunal: Charlene A Scott FCI Arb, Chair
Jocene Wade, Deputy Chair
Orin Simmons, Panelist

Directions Hearing: 19 August 2024

Hearing Dates: 13 and 16 December 2024

Venue: Employment & Labour Relations Meeting Room
Parliament Street, Hamilton HM12

Counsel: Mr. Craig Rothwell of CHW for the Complainant
Mr. Paul Harshaw of Canterbury Law for the Respondent

Witnesses:

(via Zoom)
Clinical Manager
– Employee Relations Manager (ERM)
– VP Human Resources/People

DECISION

1. The Tribunal convened on 13 December 2024. As there were attorneys representing both the Applicant and the Respondent, they were all aware of the Directions Hearing held on 19 August 2024 and had complied with the same. The parties had been engaged with the issues of this matter for over a year and had not resolved it. Conciliation attempts between June 2022 and November 2022 were made pursuant to section 69(1) of the Trade Union and Labour Relations (Consolidations) Act 2021 (the 2021 Act) to no avail. The matter was then referred

to the Employment and Labour Relations Tribunal. The Tribunal convened to hear this matter proceeded directly to hearing the matter without additional time being allocated to settle the matter.

2. The Statement of Claim and the Defence, the various Witness Statements, viva voce evidence of the Witnesses, written closing submissions from each Counsel form the basis of the Tribunal's deliberations and award.
3. At all times, _____, hereinafter being referred to as the Applicant in this case, was a registered _____ who was employed by the _____ (_____) to work at _____. _____ will be known as the Respondent in the case. The Applicant had been in their employ for 12 years, with last unit having worked in being the _____.
4. Below is what we note to be the chronology of events that led to the Applicant being terminated from her employment with the Respondent. We are thankful for this chronology of events set out in the Applicant's Statement of Claim within her bundle of evidence and have followed it for ease of reference :-
 - a. 30 January 2021- date when the Applicant approached _____ (_____) in the early morning shift, to discuss her concerns about maintaining a 'peaceful' working environment. _____ became aggressive towards her, so much so that she, _____ had to be restrained and held back by four (4) other _____ from attacking the Applicant.
 - b. Later that day, the _____ Manager, Ms. _____ (the Unit Manager) informed the Applicant that she was being placed on Administrative Leave for one day.
 - c. 31 January 2021- the Applicant submitted a report of the events of 30 January 2021 to the Employees _____.
 - d. 1 February 2021- a meeting took place between the Applicant, the Unit Manager and the _____. The _____ promised a follow-up meeting with the Applicant and _____. The Applicant welcomed that meeting so as to resolve her working relationship with _____ as well as to bring a level of normalcy in the Unit. She used this waiting period to avoid _____, if at all possible.
 - e. 13 March 2021- the Applicant receives a phone call from a female police constable warning her to stop harassing _____. During this period, the Applicant had done her best to avoid _____ whilst working.
 - f. 15 March 2021- she informed the _____ of this phone conversation and requested an intervention so that matters do not get any worse. No acknowledgement or any response from the _____ was given at any stage.
 - g. (*Deafening silence from the Administration- our emphasis*).
 - h. She then sought union representation through the _____ and had a bit of difficulty sourcing someone for herself. Next she sought legal advice of an attorney. The attorney requested that a meeting take place between the Applicant and _____. The _____ response to the attorney was that this matter was an internal one.
 - i. On the 17 March 2021, the _____ wrote to the Applicant and advised that she seek union representation. That same day, the attorney sent a 'cease and desist' letter to _____.
 - j. (*Deafening silence from the Administration- again our emphasis*).
 - k. 31 May 2021- the Applicant notified by the _____ that she is being placed on administrative leave with no reason provided as to why.
 - l. 3 June 2021- in a meeting, she was informed that _____ made complaint on 9 April 2021 stating that she, the Applicant made homophobic comments about her. At that meeting, the Applicant supplied names of four (4) witnesses to support that she did not do as _____ implied. The Applicant used the meeting to express the kind of intimidating behaviour of _____ exhibited towards her as well as providing the name of another _____ and clarified that she did not have any evidence to support her claim with this _____. The Applicant was assured that matters discussed there were confidential.

- m. The promised to conduct an investigation into what was discussed as well as to interview the witnesses mentioned.
 - n. The next day, 4 June 2021 the Applicant submitted a report to the and the Unit Manager about the intimidating behaviour of towards her. The Applicant emailed the and informed her that one of the witnesses had left and provided details of another incident witnessed by another where allegedly made homophobic comments to a patient.
 - o. 18 June 2021- (now 5 months since initial altercation and 2 weeks after the 3 June meeting) – the advised that she was conducting an investigation.
 - p. 23 June 2021- The Applicant took matters into her own hands by sending an email to the Head of , about the events that had transpired since 30 January 2021. No response from her as well.
 - q. 11 August 2021, the emails her to say that she, the , is making progress. On 30 August 2021, the writes again to say that she hopes that they can meet in September.
 - r. Three more months passed, then on 29 November 2021, the Applicant receives a copy of the report where the concluded *'that it was probable that the Applicant made false allegations'* against . **A person has the right to face their accuser.** The Applicant was informed that she had 10 days to prepare for another hearing before Mrs. VP People, which was scheduled for 9 December 2021.
 - s. It appeared that the report did not focus on any of the concerns of the relationship between the Applicant and rather, it seemed to focus solely on the complaint filed by ; on 9 April 2021 which concerned something said back on 30 January 2021, allegedly said by the Applicant to a male concerning . Whatever the Applicant was alleged to have said to this male was deemed to be a false allegation against .
 - t. This report also included remarks from who initially was not involved with the Applicant's report and it appeared that the may have purposely involved her by sharing matters shared in confidence with the by the Applicant.
 - u. Following on from that December meeting, in a letter dated 31 January 2022, the VP People decided that the Applicant would be terminated on 4 February 2022.
 - v. In May 2022, the BPSU unsuccessfully appealed the Applicant's termination. The Officer upheld the decision to terminate the Applicant's dismissal from the .
5. Effective 31 May 2021, the Applicant was placed on administrative leave and was effectively terminated at the end of it, after having to wait several months for various meetings and answers based on the allegations stating that that the Applicant made her out to be homophobic. Then another ; allegation about something different was added to the complaint and this was exiting from the Respondent's employ within the next two months. Would whatever this had to add amount to anything?
 6. There were many red flags being held up for the need of some kind of overall employee intervention or employee assistance in the Unit. The Applicant along with another colleague approached and the Applicant said to her- *'Let peace reign in the unit.'* or words to that effect. It appeared that matters were still not taken seriously that early morning of 30 January 2021 and really not until April 2021 when complained that she was alleged to have made homophobic comments about another as well as homophobic comments in general. That was when HR really became involved and placed the Applicant on Administrative Leave. At this juncture, she still has not faced her accuser.
 7. We learned that joined the in 2018. The Applicant, having been there since 2010, some (8) years prior, assisted her in feeling comfortable in the working environment in the unit. It seemed that the Applicant's good efforts were for naught in that after a year or so, seemed to become offended by something the Applicant either said or did and would not say what the problem was. Rather than sorting out whatever it was, matters were left to simmer. On 29 January 2021, the Applicant opened an email invitation to attend with before the to discuss some of her () concerns in the Unit. The email highlighted that it was not a disciplinary matter and to attend at a particular day and time. The

Applicant had not opened her email in time to attend this meeting and replied that she could work it out with on her own. Therein lay the danger.

8. Through a series of misguided efforts, while at work that next morning, the Applicant with another as a witness, decided to approach [redacted] and say what she said to her. The reaction from [redacted]; was not a normal response as we saw it to be. In fact, [redacted] lunged at the Applicant such that at least three (3) to four (4) other [redacted] had to hold [redacted] back from attacking the Applicant while another [redacted] separated the Applicant from [redacted]. That was far from normal behaviour expected of a professional [redacted]. There was some name calling that took place between the two of them. The actions of the two of them were captured on video footage which did not capture the nuances as well as all what was said in the heat of the moment nor did it capture the dynamic of what was transpiring. Suffice to say, that within three (3) hours of the incident in the Unit, the Applicant realising that this was more than she could handle, emailed the [redacted] requesting that she set up a meeting day with [redacted] and herself. An hour later on the same day, the Applicant emailed the [redacted] stating that *'the unit is at the verge of eruption.'* This time she requested to have a meeting with a specific [redacted].
9. As there were other [redacted] seen in the footage as well as the two main players all captured, would not 'best employee relations practices' call for an immediate meeting to sort out matters and not let them fester as well as allay concerns of all the employees? The [redacted] prior meeting request to have the two [redacted] meet and discuss whatever was going on in the unit was not mandatory. Now something untoward had transpired between the very two individuals who the [redacted] was prepared to meet up with the day before. This encounter now necessitated a different response and a need for both parties to meet and resolve their conflicts. Conflict resolution should have come to mind and it did not. What did happen was that the Applicant was put on administrative leave for the day. What about [redacted]? No consequence for her as far as we are informed.
10. As in Item 4(d) above, a meeting was called two (2) days later and it was only the Applicant and her manager along with [redacted] in attendance. Where was [redacted] who was involved as there were two (2) of them that created the minor disruption in the unit, albeit for just a few minutes as was shared in the statements of other witnesses?
11. Hindsight is 20/20 vision. The working relationship between [redacted] and the Applicant as well as between [redacted] and *'... and a number of [redacted] being one of them, regarding the negative behaviours she had been experiencing from them ...'*, needed to be repaired if they were to continue working in the same environment. The common denominator was [redacted]. Perhaps, at this stage, alert both parties that there was a need to meet and sort out matters immediately. If they were unwilling to come together, inform them that matters will move to a disciplinary meeting and that both are entitled to representation as per Article 17 of An Agreement between [redacted] and the Bermuda Public Services Union (the BPSU) (the CBA). In particular, see Article 17- Discipline, Section A – Right to Representation. Or give each of them a First Verbal Warning (Section B- 17:03(i)) or a First Written Warning (17:03 (ii)) which should have gone out as soon as was practicable to both of them and the employees be required to attend a disciplinary meeting to address matters of concern and be given the opportunity to have a Union representative available.
12. This way both parties to the infraction are put on notice that their behaviour was egregious and would not be tolerated in the Unit. Let each know that if anything happened like this again, both would be suspended. Perhaps at this stage, a referral be made to the Employee Assistance Programme (EAP) for both [redacted] to attend, especially in light of the statement made by [redacted]; having voiced her concerns about some of the [redacted] in the Unit. On the papers before us, none of that appeared to have been done; nothing was said. There were no Warnings or Disciplinary Charges placed on her file or before the Tribunal. There were huge gaps of no communication between the [redacted] and the Applicant as to whatever was happening. It appears that the Applicant was treated as the sole guilty party who at no time thereafter came face to face with her accuser.

13. Members of the Unit were quietly observing what was going to happen. It was noticed that the Applicant was placed on a day's Administrative Leave and then, thereafter, she was placed on a further Administrative Leave. Nothing appeared to happen to [redacted] and the Applicant was left waiting for some form of resolve. In the Tribunal Hearing, we were informed in evidence that [redacted] went out on medical leave sometime later. So, this matter did become a one-sided affair. The two persons were never sat down with the [redacted] and the Unit Manager or EAP to thrash out their differences. Perhaps, if they had had a meeting, there would have been no need for [redacted] to involve the police in her affairs. That may have been paranoia on [redacted]' part. However, it also seemed to demonstrate that [redacted] was not that unwell as to involve the police, an outside agency for an internal matter.
14. Now let us look at Item 4(l) above where the Applicant was informed on 3 June 2021 that [redacted] made a complaint back on 9 April 2021 against her ([redacted]s) in that she was accusing the Applicant of making homophobic remarks about her ([redacted]s). These remarks were alleged to have been said back on 30 January 2021 to a male [redacted] later in the morning on the very same day of the altercation in the Unit.
15. The [redacted] seems to want to hold it over the Applicant's head that she 'lied' to her when the Applicant proceeded to speak to [redacted] on that morning instead of letting the [redacted] intervene between the two of them. The Applicant did not inform [redacted]s about the telephone conversation she had with the [redacted] to [redacted]s. Some people feel, she being one of them, that they do not need outside assistance in managing their relationships with others; that they can manage their own affairs just fine without the need for another's intervention. The Applicant may have thought that she would be able to do that and then move on. The interaction was very short, just a matter of minutes. Having said what she said, [redacted]s lunged at her, called her a name, the Applicant shot back with a verbal response to [redacted] and then both were pulled away from each other. [redacted] anger at the time required four (4) persons to hold her back from attacking the Applicant. The Applicant went on with her day.
16. That being said, look at how long it took for the [redacted] to have a proper meeting with the Applicant. The nature of the altercation called for immediate action and an intervention between the both of them. There was never a meeting with the two involved [redacted] at any point in time, even up to the moment when the Applicant was terminated from the Respondent's organisation.
17. There was a meeting lined up on 1 February 2021 with the [redacted] and the Unit Manager. Nothing was said about any combined meeting at any time after 30 January 2021 with the two [redacted] and their manager. Were matters so out of control in the Unit between the two [redacted] that it was challenging to place the two of them in the same space? Also, this seemed to be the one time that the Unit Manager was in a meeting with the [redacted] and the Applicant.
18. It also appears from the events after 30 January 2021, more credence was given to [redacted]' complaint which was lodged on 9 April 2021, which was brought to the [redacted] attention some two (2) and bit months afterwards and no further investigation done in respect of the Applicant's complaints. From our perspective, both complaints were valid in respect of each of the parties and both complaints needed to be addressed. We notice, once again, it became a one-sided investigation as per whatever [redacted]s alleged against the Applicant.
19. We were also informed that the [redacted] was told by an outside agency to leave [redacted] alone once she was deemed to be on medical leave. So that placed everything in an awkward situation. How was this matter to be resolved? How were the parties to come together to manage their differences? All focus and attention was then placed solely on the Applicant's behaviour as was laid out in the email dated 9 April 2021 from [redacted].
20. It seems that the male [redacted] named in this email shared details of what the Applicant had said to him over the telephone on 30 January 2021 and he in turn shared the same with [redacted]s. What he relayed to her was that [redacted].

the Applicant said he was gay; that she () s) hated him and was given a scripture quote about the rainbow from

21. Interesting that ; used the phrase in her email '*... this is what I have been crying out to everyone in management about...*' She claimed that she was shocked about the allegations made against her but not surprised that the Applicant had said it. For her to repeat these phrases at this juncture, she should have enlisted the assistance months back and not sat on the information of what the Applicant allegedly said to the male . Also ' saying that she has been crying out to everyone in management about some sort of challenge in the Unit. What if anything, did s do to improve her interaction with the other s in the Unit?
22. Going back to 13 March 2021, the Applicant received a phone call from the Bermuda Police Service warning her to refrain from harassing . The Applicant says that she avoided her and really had nothing to do with her since the episode in January. The was informed and even copied in on an email from an attorney that the Applicant hired. Things were getting more serious than the Applicant could handle. Upon informing the about this, she (the) replied to the attorney that this was an internal matter. On 17 March 2021, the Applicant's attorney sent a 'cease & desist' letter to . Rather that the taking a more serious approach to what is really going on between the two of them in the Unit, she dismisses any further engagement with the attorney. One just needs to review this situation and see it getting out of control and has moved to another level. For an employee to call the police about the alleged behavior of a co-worker is serious. The clearly failed to investigate it and to follow through on this. Aside from the refraining from contacting because of her sensitivity surrounding the situation between herself and the Applicant, she was not so sensitive as to prevent her from contacting the police and alleging the Applicant was harassing her. had no proof and was basing it on what it looked like.
23. Then on 31 May 2021, the Applicant finds out that she is placed on a further Administrative Leave with no reasons provided. Days later, the Applicant attended a meeting where she was informed by the that the Administrative Leave was a result of homophobic comments attributed to in that 9 April 2021 email. These comments were clearly heard by the Applicant. A person has the right to face their accuser. The Applicant, without hesitation, then provided names of four (4) other witnesses who also had heard what said about the LGBTQ community (the community) that day. It was for the to interview them and she said she did but no one wanted to commit to writing it down. Two of them would have nothing to lose as they no longer worked for . Eventually one of the witnesses did send an email setting out what she heard express about the community on a particular day in 2019, but it was not considered as part of the evidence to support attitude towards the community. So the Applicant was made out to be lying about character and not admitting that she had made comments such as that in the past.
24. It is most unfortunate turn of events. The Applicant was held in limbo and then she was informed that there were comments she made in respect of . There had to be an element of truth to her comment about if she then provides the names of four (4) other witnesses. She was consistent with what s allegedly said about the community. Also, these were comments that the Applicant alone heard when she was driving home. There were no other witnesses present. These were not malicious comments; they were matter-of-fact comments based solely on her experience and knowledge of gained over the years of working together in the same Unit with her. There was the excerpt from ; booklet "True Reflections" on page 51 where one finds these words '*... Something else is fast approaching and I am really concerned. I realize that there are a lot of homosexuals coming into the church. This sounds really good and nothing is wrong with it. It becomes a problem when their motives are wrong. Young men and women don't come into the house of God to hide your erroneous lifestyles. . .*' If nothing else, this could highlight .' bias against homosexuals as she feels that their lifestyle is erroneous.

25. One thing that the [redacted] ought not to have done was to directly question [redacted] as she did by disclosing a confidential statement the Applicant shared with her. Then next thing was that [redacted] lodged a complaint against the Applicant for what she shared in confidence with the [redacted]. What was shared seemed to be an honest concern held by the Applicant of what might or could happen to her family if there was a disagreement between the [redacted] here. Her thinking was that a call could be made from here in Bermuda to possibly make something happen there in [redacted]. That was not being malicious; this was something very real to her and she was concerned about herself and her family. That was clearly not professional disclosing a comment such as that like that to another [redacted] where matters were already bubbling over. Maybe this was an innocent mistake on the [redacted]'s part. However, persons involved with confidential information do not share that information with the very person named in the conversation. Make enquiries with others who may share the same cultural norms and certain societal expectations; just do not ask the named person. Besides, because of how matters were panning out in the Unit, the Applicant would not know who was watching her back. Now another potential enemy was created.
26. In the hearing, we were told that the [redacted] had only been employed with [redacted], for two (2) years at the time of all of this matter and that she did not know how the people worked within the units. As she was new to the hospital and its diversified employment population, the Tribunal hopes that she has used these past few years to educate herself about how cultural differences may or may not impact staff interaction with each other and learn additional coping mechanism to reduce interpersonal flair ups. We trust that there was some type of intervention by an outside agency to assist greatly with interpersonal conflicted situations in the Unit.
27. Evidence was led by the [redacted] that [redacted] was impacted tremendously, emotionally and psychologically, such that she was on leave from the [redacted] for extended periods of time. What appears interesting is that [redacted] was the person who lunged at the Applicant and she ([redacted]) was seemingly affected by it all. Why not the Applicant as she was the one who was attacked? Reviewing the email from [redacted] to [redacted] dated 1 February 2021, it highlighted that [redacted] was clearly the aggressor. The Applicant did not touch her but said to her- 'All I said was to let peace reign in the unit, and you're behaving like this.' Something was up that day with [redacted]; if the Applicant had not set her off that morning, something else clearly would have. This was an over-reaction on her part as well as clearly demonstrating unprofessional behaviour in the Unit.

LAW

28. Sections 24 and 25 of the Employment Act 2000 (the Act) must be read together. Section 25 of the Act states as follows:

'25. An employer is entitled to dismiss without notice or payment of any severance allowance an employee who is guilty of serious misconduct-

- (a) which is directly related to the employment relationship; or*
 - (b) which has a detrimental effect on the employer's business,*
- such that it would be unreasonable to expect the employer to continue the employment relationship.*

29. Section 24 of the Act must be read together:

'24. (1) An employer shall be entitled to take disciplinary action, including giving an employee a written warning or suspending an employee, when it is reasonable to do so in all the circumstances...

(3) In deciding what is reasonable for the purpose of subsection (1), regard shall be had to-

- (a) the nature of the conduct in question;*
- (b) the employee's duties;*
- (c) the terms of the contract of employment;*
- (d) any damage caused by the employee's conduct;*
- (e) the employee's length of service and his previous conduct;*

30. Section 25 of the Act gives an employer the right to dismiss without notice an employee who is guilty of serious misconduct. That is very serious. What does that amount to? In Civil Appeal 2016 No 12, [2017] Bda LR 72, CoA for Bermuda, Sir Scott Baker, President of the Court of Appeal for Bermuda states that ‘... *in order an employer to dismiss an employee without notice, two conditions must be satisfied. First, the employee must be guilty of serious misconduct and second, it must be such that it would be unreasonable to expect the employer to continue to employ him. ...*’ Sir Scott Baker referred to these conditions by adding ‘and’ whereas the Act says ‘or’. So technically, it could be one or the other. However, for the sake of argument, we shall use both conditions as was indicated by Sir Scott Baker, the President. Section 25 of the Act must be read in conjunction with Section 24 of the Act. So, as far as we are concerned, the Respondent has not met the threshold of these two conditions combined.
31. The Tribunal has witnessed in evidence two employees engage in a verbal altercation in the Unit. No fists were involved; no blood was drawn; no involvement with or harm done to patients; no money was stolen; neither one was physically injured; there was no broadcast of a negative nature emailed to all staff of the Respondent. These kinds of incidents might be considered something of a serious nature enough to amount to serious misconduct. However, it was mere words that two employees exchanged between each other. It was personal observations of _____ comments directed toward the community. These words did not bring the Respondent into disrepute. Perhaps disclosing to one of the local news outlets that there is something untoward happening in a particular unit might bring the Respondent into disrepute. Interestingly enough, such an article did appear in January 2022 in one of the local news outlets. It started out by saying ‘*In March 2018, a former _____ ... who will remain anonymous arrived in Bermuda...*’ Was anything done to the probable author of the information provided? More than likely not.
32. Nothing was done to bring the parties together shortly thereafter or even after that months later. Would it be unreasonable for the employee to continue working there? We do not think so. In fact, the Applicant was seeking re-instatement once she could move on and all of this matter was behind her. The Respondent is a big enough organisation who hires hundreds of workers, many of whom are from overseas. So, there will be times of misunderstandings between the workers and these misunderstandings will have to be resolved promptly with all concerned and not be left to fester as was done in this case before us. The fact there were Covid restrictions and protocols in place at the time is no excuse for the inordinate time it took to finalise this matter. These _____ had to attend work as they were considered ‘*Essential Services*’ as per the Trade Union and Labour Relations (Consolidation) Act 2021, Schedule 3 Item 4. So there really was no excuse for the entire year HR took to resolve matters when there were various suggested time limits as was outlined in the CBA for when things had to be done and acted on.
33. From the evidence led, the Applicant was at all times carrying out the duties required of her pursuant to Section 25(a) of the Act and in respect of Section 25(b) of the Act, that where it becomes personal- is the Applicant behaving in a manner that is detrimental to the Respondent’s business? No is the answer. Is the Applicant providing her highest level of service to the Respondent as she possibly can? Yes is what we can observe based on the evidence led.
34. In the Harassment, Bullying & Incivility Policy 2019 (HBI Policy), stages of interviewing are set out. These must be followed. There is nothing definitively stated in this HBI Policy that says if a person was found guilty of such an infraction, that they would be terminated. At its highest, it states ‘may’. Then there is the Disciplinary Process that should have been followed, especially since the Applicant had no previous warnings or infractions noted on her file. The basic stages of 1 and 2 were skipped over and she was charged at a Level 3 Grievance

Step when no form of meeting or hearing was had. No form of resolve was offered up. In fact, up to and including the 3 June 2021 meeting, she was still being told that it was a non-disciplinary meeting. One has to give the Applicant the benefit of doubt and give her an opportunity to correct whatever it is that caused this type of intervention. That option was never afforded her.

35. The problem may lay in the timing and investigation methods used. The Applicant provided her names of potential witnesses to negative comments about the LGBTQ community expressed one day in the lunchroom and she indicated that she had interviewed witnesses but that they did not commit to signing off on anything. She could have asked yes/no questions asking if they were present and heard what was being stated by . They could have answered yes or no. Eventually one of them did send a statement to support what she heard. It was not used because it did not arrive in a timely manner to be included in one of the hearings. The also failed to accept what the Applicant told her about the occasion when offered her thoughts about the community when the Applicant had offered her a ride home. Aside from that, if someone establishes himself/herself as a member of the LGBTQ community, it is not something that needs to be kept secret anymore or even worthy of discussion. People are who they are. They have their preferences and it is not open for judgment by others.
36. The male neither denied nor accepted that he was a part of the LGBTQ community; he was more concerned that there were discussions going on between the in the unit that included his name. His letter does not read like a complaint about something malicious being stated about him; just that he was surprised his name came up at all in their conversation.
37. Usually one does not attribute persons leaving a job because of a colleague. Most often, the dislike of a manager up in the ranks, possibly, but it is most unusual that one would leave solely because of a colleague. Unless those persons expressly and solely wrote the Applicant's name on their exit form as the sole reason for their leaving the employment of the Respondent, it cannot be ascribed to the Applicant. We were informed that six persons left the Respondent's organisation within the time this matter was being investigated. We can, based on who has been named in this case, surmise at least one of those persons. Also, we are all aware that people leave jobs for various reasons and because they may not like someone in particular in a unit, that would not rank high on the list of reasons for leaving. Seeking a higher pay scale, non-renewal of a work permit, better working conditions elsewhere, better living conditions, family needs, etc. are things being sought. Neither the nor VP People provided us with any of the names of persons ascribing that they specifically left because of the Applicant.

CONCLUSION

38. The Applicant is a skilled . If this matter was handled appropriately, she could easily have been absorbed into another department of the Respondent's origination as there was always a need for experienced and well trained . Her work permit would be up for renewal in December 2022. Buy her out and advise that they can no longer continue a working relationship with her, despite her clean employment record of 12 good years prior without any infraction against her name until these events.
39. The Applicant was never charged with any prior disciplinary offences. She was involved in a mediation, which is non-disciplinary, with one of the some years back and they each went about their business while working in the same organisation. In the matter before us, she had not been given an opportunity to rectify any behaviour that was deemed to be unbecoming to the culture to the Respondent. As stated before, all meetings up to June were considered non-disciplinary. Then was a huge gap of time of no interaction from anyone and then the matter came alive at the end of November 2021 and then became a grievance. She was given ten (10) days to prepare for a meeting with VP People.

40. Pursuant to her contract, she should have received a Separation Agreement after six (6) months of being on Administrative Leave as set out in Item 10 of the of the Administrative Leave Policy. It mattered not that there was the likelihood of a looming meeting in December 2021. After all, she had been on Administrative Leave since the end of May 2021. The CBA set out the various steps that had to be followed and at the end of the day, it appears that many steps were skipped to the detriment of the Applicant.
41. Given that [redacted] as well as VP Peoples would know or at least have it withing their purview that the bringer of this grievance was leaving the island in December 2022, the December meeting should have consisted of a discussion, a possible verbal warning at its highest and if the Applicant was found guilty of some infraction, let her know that past words, actions, behaviours or whatever it might be were not acceptable to the organisation and allow her to return to work, in another department should that be the better resolve.
42. At the hands of Human Resources, there was delay in addressing the initial conflict in a timely manner; there was a lack of communication in a world of emails and telephones for instant verbal access; an inadequate investigation (one-sided) where everything was focused on the complaint filed by [redacted] and nothing focused on the Applicant's allegations of harassment and intimidation by [redacted]; the two parties never meeting nor having the Unit Manager on board and having her input in all of this as per the CBA; delayed resolution; inequitable treatment and inadequate support of the Applicant throughout all of this matter; a lack of sensitivity and responsiveness especially when she informed the [redacted] that the police were now intervening in the matter. It was all now taking on a totally different life.
43. Be that as it may, in all the circumstances, we find that the Applicant was unfairly dismissed pursuant to Sections 24 and 25 of the Act and that the Respondent has failed to prove that they were justified in dismissing the Applicant. The Tribunal does not find whatever the Applicant was alleged to have said to be false and malicious. She stated what she knew or at the very least, what she heard [redacted] verbally state. No one was with her and [redacted] as they walked through the car park and [redacted] said what she did. Others in the lunchroom heard [redacted] express her opinion about the LGBTQ community. It all a question of fact that [redacted] expressed a particular opinion at the time and others heard her say it. The Applicant ought not have to apologise for something she witnessed and/or heard stated by another and in this instance, [redacted]. The Applicant was not guilty of misstating something she heard said in her presence.
44. The Tribunal does not find that the Applicant acted dishonestly so as to impinge on the employment relationship.
45. We find the Applicant to be credible when she gave her evidence; we cannot say anything about [redacted] as there is no live evidence to test on her behalf. There is only the statement dated 9 April 2021 which may be more suspect than valuable. This statement was written some nine (9) weeks after the 30 January 2021 interaction. Why produce it then and not earlier if matters were that painful for her? And then within days, she has a police officer call the Applicant and ask her to stop harassing [redacted] was not as emotionally devastated and pained by all what happened as she would have HR to believe.
46. The Tribunal finds that the aspects of Section 24 of the Employment Act 2000 as set out in Paragraph 29 above were not taken into account when the decision to terminate the Applicant was considered.

AWARD


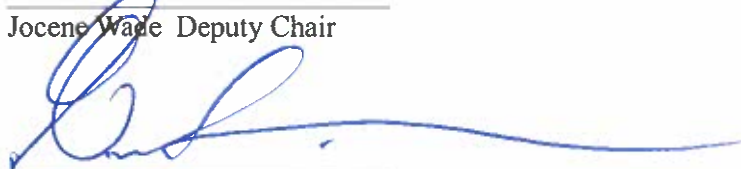
47. This is a matter between a unionized worker and an employer and as such was referred to this Tribunal pursuant to Section 70(1) of the Trade Union and Labour Relations (Consolidation) Act 2021 (the 2021 Act).

48. Pursuant to Section 70 (2) of the 2021 Act, the Tribunal may determine this matter by any means at its disposal under the Employment and Labour Code. Further, Section 2(3) the Employment Act 2000 allows for such consideration of the disposal of matter- *'Where any of the rights of an employee established by any other Act, agreement, contract of employment, custom or practice are more favourable than this Act requires, the provisions so established prevail over this Act.'*
49. The Agreement Between _____ and the Bermuda Public Services Union (the CBA), Article 34 of the same provides *'An employee who has been unjustifiably dismissed and subsequently reinstated shall not suffer any loss of pay, bonuses, seniority or other privileges which he/she would have enjoyed if he/she had not been dismissed.'*
50. All in all, the Tribunal, pursuant to Article 34 of the CBA and in conjunction with Section 2(3) of the 2000 Act, **HEREBY AWARDS** the Applicant 1. the balance of her contract with the Respondent, that is, from 5 February 2022 to 1 December 2022, with all such emoluments, bonuses, increments, pension and other such privileges she would have enjoyed had it not for her wrongful termination. 2. That the Applicant be allowed to tender her resignation.
51. There shall be no Order for Costs.

Dated this 3rd day of February 2025



Charlene A Scott FCIArb Chair


Jocene Wade Deputy Chair

Orin Simmons Panelist

NB: AN APPEAL OF THIS MATTER MAY ONLY BE ON A POINT OF LAW.

