

## **Summary of Submissions**

### **Background**

The Parties agreed that the Employment & Labour Relations Tribunal is being asked to determine whether or not the Employer breached:

### **Section 8 Unauthorised Deductions**

*An employer shall not make a deduction from an employee's wages unless —*

- (a) the deduction is required or authorised to be made by virtue of this or any other enactment, a collective agreement or a provision of the employee's contract, or by order of any court or tribunal; or*
  - (b) the employee has previously signified in writing his agreement or consent to the making of the deduction.*
- (2) Where the total amount of wages paid on any occasion by an employer to an employee is less than the total amount payable on that occasion, the amount of the deficiency shall be treated as a deduction for the purposes of subsection (1).*

*(2) Subsection (1) does not apply —*

- (a) where the purpose of the deduction is the reimbursement of the employer in respect of an overpayment of wages or an overpayment in respect of expenses incurred by the employee in carrying out his employment;*
- (b) to a deduction made in consequence of any disciplinary proceedings which were held by virtue of this or any other enactment;*
- (c) to a deduction made in consequence of an employee's participation in a strike or irregular industrial action short of a strike that results in a withdrawal of labour.*

And

### **Section 12 Vacation Leave**

- (1) An employee shall be entitled to a period of two weeks' annual vacation leave after he has completed —*
- (a) the first year of continuous employment; and*
  - (b) each subsequent year of continuous employment, but such periods of vacation are not cumulative.*

- (1A) *Without prejudice to subsection (1), an employee who has completed the first six months of continuous employment shall be entitled to a period of one week's vacation leave, but where such leave (or any part thereof) is taken prior to the completion of the first year of continuous employment, the leave so taken shall be deducted from the period of annual vacation leave to which the employee is entitled pursuant to subsection (1)(a).*
- (2) *An employer shall, where practicable, grant an employee's request to take his vacation leave at a particular time, subject to the reasonable requirements of the business and to requests for vacation by other employees.*
- (3) *An employee shall be entitled to a week's wages for each week of his vacation which shall, where so requested by the employee and where practicable, be paid in advance of the vacation.*

*[Section 12 amended by 2019: 39 s. 2 effective 1 January 2020] of the Employment Act 2000 ("EA 2000").*

The burden is herewith placed upon the Employer to demonstrate that the Employee's complaint is without merit.

As a matter of record, the Hearing in this matter was originally set down for Friday, October 1, 2021, but was recessed until November 17, 2021 to allow the Employer's Counsel to review the amendments to Employment Act 2021.

In particular, the Panel shared the wording of the Transition Provisions of Section 102 10(d) of the Trade Union and Labour Relations (Consolidation) Act 2021 to the Parties where:

**102 (1) Upon the coming into operation of this act -**

- (a) *any registered trade union which was so registered or deemed to have been registered under section 9(2) of the Trade Union Act 1965, provided its registration was not cancelled or withdrawn, shall be deemed to be registered under this Act;*
- (b) *any certified trade union which was so certified or deemed to have been certified under section 30F (3) of the Trade Union Act 1965, provided its certification was not cancelled, shall be deemed to be certified under this Act;*
- (c) *any actions or proceedings which commenced under the Trade Union Act 1965, Labour Relations Act 1975, or Labour Disputes Act 1992 but have not concluded, shall be deemed to have commenced under this Act;*
- (d) *any actions or proceedings which commenced before the Employment Tribunal under the Employment Act 2000 shall continue before the Employment Tribunal as constituted before the commencement of this Act.*

*(2) The Minister may, by regulations subject to the negative resolution procedure, make such further transitional provisions as he considers necessary or expedient as a consequence of this Act.*

For the record, the Employee is currently outside this jurisdiction, which caused undue delays in communication and receiving responses on the exchanging of documents, and a hearing date. The Employee was given various opportunities to submit a bundle of documents by September 24, 2021 for the October 1, 2021 Hearing.

In addition to the skeletal Referral Document from the Labour Relations Officer, the Tribunal was further assisted by the Department of Immigration ("Dol") in providing copies of:

- The Complainant's 2014 Statement of Employment;
- Copies of Section 6 of the Bermuda Government Dol Work Permit Applications submitted by the Employer to the Dol from 2013 to 2020 as well as;
- The Ministry of Home Affairs Department Work Permit Policy Manual which included the Job Categories with Special Conditions Section 7. 2 for Beauty Salon, Spa and Hairdressing Staff.

The Tribunal takes as its authority from Part VA of the Act:

Section 44D

- (1)(a) to require any person to furnish, in writing or otherwise such particulars in relation to the matter as the Tribunal may specify; and*
- (b) require a person to attend before the Tribunal and give evidence on oath or otherwise, or produce documents; and subject to this Act, shall not be bound by any rule of evidence in civil or criminal proceedings.*

Additionally, at Schedule 2 Section 20 of 2021 EA:

*Save as otherwise provided by any provision of this Act or in regulations made by the Minister regulating the procedure to be followed by the Tribunal, that the Tribunal shall regulate its own proceedings as it thinks fit.*

A bundle from [REDACTED] for the Employer, [REDACTED], was submitted on September 27, 2021.

The Tribunal informed the Parties that the matter of the Employee's dismissal claim, personal clothing claim and work permit were not being adjudicated in this Hearing.

The Hearings on October 1, 2021 and November 17, 2021 were conducted via WebEx video conferencing.

### **In the Case of the Employee**

1. The Complainant sent an email dated, Thursday, September 30, 2021, 2:30 AM, Subject: "My statement" and read into evidence. The Employee presented no bundle of documents which she wished to rely on at the Hearing, which Counsel emphasised to the Tribunal.
2. The Employee argued vehemently that the case of the Employer was flawed generally, and in its particulars.
3. Citing her Statement of Employment of March 25, 2013, the Employee directed the Tribunal to consider that the Company would provide a range of compensation and benefits – including, but not limited to, a 45% commission rate and ten (10) vacation days.
4. The Employee received \$600.00 BM dollars for her 2013 – 2014 Annual Vacation Entitlement. There was no evidence that a similar payment of \$600.00 BM dollars was paid for 2014 – 2015 on the employee's second (2<sup>nd</sup>) year of employment.
5. That the Employee was expected to work outside of her normal allotted work days without additional compensation, as written in her 2013 and 2014 statements of employment.
6. The Employee acknowledged that she signed a Statement of Employment Changes (Variation Clause) on August 17<sup>th</sup> 2015, where the terms of employment indicated:
  - *Commission of 50%*
  - *Paid annual vacation (after one year of continuous employment) 0 days.*
7. The Employee further remarked that she signed her name, in the presence of her Employer, to several of the DoI Work Permit Application forms for Renewals, citing Section 6 - Statement of Employment, where the agreed Base Rate and annual vacation were defined as:
  - (i) Renumeration Base Rate was \$125.00 per week and a Commission of 50% for 2016;
  - (ii) Renumeration Base Rate was \$125.00 per week and a Commission of 45% for 2017;
  - (iii) Renumeration Base Rate was \$125.00 per week and a Commission of 50% for 2019;
  - (iv) Renumeration Base Rate was \$100.00 per week and a Commission of 45% for 2020.

8. The annual leave denoted on the same Section 6 Statement of Employment of the Dol Work Permit Application Forms for the respective years stated below (in compliance with the fine print of Section 12 EA 2000, printed on the Dol Work Permit Application Form were:
  - (i) Paid annual vacation (after one year of continuous employment) 10 days for 2016;
  - (ii) Paid annual vacation (after one year of continuous employment) 10 days for 2017;
  - (iii) Paid annual vacation (after one year of continuous employment) 10 days for 2019;
  - (iv) Paid annual vacation (after one year of continuous employment) 10 days for 2020.
9. The Employee stressed that she was told by the Employer that she had to sign Section 6 of the Dol Work Permit Application Forms, with the denoted Commission rate and 10 Annual Vacation Leave, in order for her annual Work Permit renewals to be processed.
10. The Employee vehemently denied that she was provided with copies of the Section 6 Statements of Employment (Dol Work Permit Applications Forms) for 2016, 2017, 2018, 2019 and 2020.
11. The Employee stressed that she was barely satisfying her living expenses and financial obligations, especially payment of vacation costs, based only on the net weekly wages from her weekly 50% Commission Rate, and that is why she made inquires about the base rates and paid vacation with the Labour Section.
12. The Employee offered no further relevant evidence in support of her claims.

#### **The Case of the Employer**

13. Counsel for the Employer submitted, as background, the Company's document bundle. In particular, that the Company entered into an employment contract with the Employee on March 25, 2013 as a Nail Technician. The Employee's gross weekly wage was a Commission rate of 45% of weekly earnings, and the leave entitlement was ten (10) paid days.
14. On February 6, 2014, the Dol accepted the Statement of Employment amendment to reflect the Employee's new job title to Hair Stylist and Nail Technician. Of note, the Employee's gross weekly wage remained as a Commission rate of 45% of weekly earnings and the leave entitlement remained at ten (10) days paid days.

15. For emphasis, Counsel for the Employer directed the Tribunal to the August 17, 2015, Statement of Employment Changes (Variation Clause), citing that the Employee signed her name to accept the gross weekly Commission rate of 50% of weekly earnings and zero (0) paid vacation days.
16. The Panel was asked by Counsel to also note the signatures of the Employee on all of the Section 6 Statements of Employment (DoI Work Permit Application Forms) for 2016, 2017, 2019 and 2020.
17. Counsel for the Employer also stressed that the wording of the Employee's Statement of Employment for 2013 remained in force during the Employee's seven (7) year employment and included the Statement of Employment Changes of August 17, 2015 until February 2021.
18. The Employer stressed that at no time was there any threats or coercion towards the Employee to sign her name on the DoI Work Permit Renewal (Section 6 Statement of Employment) Forms.
19. The Employer did remark that if the Employee asked for copies of the Work Permit Renewal Forms containing Section 6, the Employee would have been provided with copies.
20. The Employer testified that the Company had been directed by the Department of Immigration in 2016 to submit any Base Pay Rate figure as well as a Commission rate figure, which was required for only Work Permit Renewal purposes.
21. The Employer did confirm to the Tribunal that the 2016 to 2020 Work Permit Application forms containing Section 6 Statement of Employment (denoting the base rates and rate of Commissions) were housed in her Company desk.
22. The Employer confirmed to the Tribunal that the Company was granted a two (2) year work permit for the Employee for 2017 & 2018.
23. The Employer testified that the Employee had a sizeable clientel and that is why the commission rate was increased to 50% of weekly earnings.
24. The Employer shared that some of the Company's other employees commenced employment with a weekly base rate of \$400.00 BM doallrs per week and a commission rate of 25%.
25. Counsel for the Employer also asked the Tribunal to note that the Company assisted the Employee during her bout with illness, and at times, the Employer personally contributed funds to assist the Employee while she was convalescing.

26. To counter arguments for the additional claims by the Employee for compensation in respect to unpaid base rates and unpaid vacation from 2016 to 2020, Counsel submitted to the Tribunal that the Employee's assertions were inconsistent with the facts.
27. The Employer emphasised that on several occasions, the Employee did not raise any concerns about her commission rate; that she did not disagree with not being paid a base rate of pay, nor did she disagree to not being paid for vacation - from 2015 to 2020.
28. The Tribunal noted no response to why the Employee had no paid public holiday pay per the EA over the life of her employment with the Company.
29. Instead, the Employee continued to work and accepted the terms of her August 2015 Statements of Employment Changes from 2015 to 2020.
30. Neither Counsel nor the Employer offered further information in their submission, save that, the Company went out of its way to ensure the Employee was treated fairly and that the Employee's gross weekly commissions and other benefits, were similar and consistent with other Bermuda Hair Stylists and Nail Salon businesses.

## **Deliberation of the Tribunal**

### **Statement of Employment Law**

31. In consideration that the employment relationship between the Employer and Employee was managerable from 2013 until 2021, the Tribunal could not in all fairness discount the words of Counsel for the Employer: **"that ignorance of the law is no excuse"**. As such, the Tribunal applied the maxim equally to the Employee and to the Employer.
32. The main purpose of the written Statement of Employment, also referred to as the Contract of Employment, is to clarify the terms and conditions of the employee's employment and avoid uncertainty or misunderstandings - where the employee's expectations might not be the same as the employer's intentions.
33. From a statutory perspective, the principal source of employment law in Bermuda, is the EA 2000 as amended, which states that a written Statement of Employment shall be given to the employee, containing various particulars of the employment relationship. The statement must include, but not limited to, the job title, a brief description of the work to be conducted, salary details, hours of work/holiday pay and paid vacation days.

34. From a contractual perspective, the Employer can enter into a more detailed employment contract with the Employee, provided the parties agree and preferably in writing. More specially, Section 2 Application reads:

*2 (1) Subject to any express provision to the contrary in this Act or regulations, this Act applies to all employers and employees.*

*(2) An agreement to waive any of the requirements of this Act and the regulations is of no effect.*

*(3) 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.*

35. Similarly, a verbal agreement can constitute an agreement contract, assuming it can be proven.

36. The Tribunal is equally mindful that the Section 6(2)(p) EA 2000 as amended clearly stresses that, where the Employee requires a work permit, including but not limited to any employment-related conditions, that any DoI restrictions must be set out in the work permit.

37. More specifically, this is defined at Part II Conditions of Employment :

#### Statement of Employment

6(2)P where the employment is pursuant to a work permit, the date of issue and expiry of that work permit, any employment-related conditions (including any requirement to work at more than one location) and any immigration restrictions set out in the work permit;

#### Minimum Terms of the Act

38. The Tribunal noted that the EA 2000 sets out minimum terms and conditions as set down by law, that the employer has to observe, including but not limited to, vacation pay, holiday pay and termination. Specifically, the parties cannot contract out of the minimum requirements except where otherwise defined in the Act.

39. To be precise, Section 7.2 of the Ministry of Home Affairs Department Work Permit Policy Manual, which included the Job Categories with Special Conditions for Beauty Salon, Spa and Hairdressing Staff, instructs as follows:

*Contracts of employment for beauty salon, spa and hairdressing staff must include information relating to holiday and sick pay entitlements (eg. If remuneration is by way of commission only, the contract of employment must specify if the commission payments are inclusive or exclusive of holiday and sick pay*



*entitlements.*

40. For avoidance of doubt, holiday pay entitlement pertains to Public Holiday as set out in Section 11 Public Holidays, and not paid Annual Vacation Leave as set out in Section 12, respectively, in the EA 2000 as amended.
41. The Statement of Employment Changes of August 17, 2015, stated a commission rate of 50% and zero (o) paid annual leave days after one year of continuous employment.
42. However, that same August 17, 2015 Statement of Employment Changes did not keynote whether the commission rate of 50% was inclusive or exclusive of holiday and sick pay entitlements.

**Company Statements of Employment and Section 6 Statement of Employment Department of Immigration Work Permit Application Forms**

43. The Tribunal's focus on the Employee's March 25, 2013 Statement of Employment at paragraph 1 denoted the period of the Employee's Contract as being: for one (1) year from April 25, 2013 to April 25, 2014 and shall be renewed **on a annual basis subject to performance and the approval of the Department of Immigration and Labour Affairs of Bermuda Government.**
44. The identical wording is written in the July 12, 2014 Statement of Employment where the job title change to Nail Technician and Hair Stylist was granted by Department of Immigration.
45. The Tribunal also noted that only the Employee's 2013 Statement of Employment was presented as evidence in the Employer's bundle. Specifically, that there were no copies of the Company's Statements of Employment for 2015, 2016, 2017, 2018, 2019 and 2020.
46. Equally, that the Employee did not supply any copies of her Company or Dol Statements of Employment for the same years.
47. The Tribunal then reviewed and sought guidance based on the fine print as written at the top of Section 6 Statement of Employment – the Dol's Standard Work permit Application Form, which states:

*Refer to Section 6 of the Bermuda Employment Act 2000 for additional details to insert appropriately. Employers may use this form or attach a more specific Company Statement of Employment, ensuring that contents as noted below are reflected.*

48. It stands on its own footing, that Section 6 - Statement of Employment of the DoI Work Permits Application Forms for 2013, 2014, 2016, 2017, 2019 and 2020 should marry with the Employee's terms and conditions of continued employment on an annual basis, except for the absence of any specific DoI Section 6 Statement of Employment for 2018 which formed part of a two (2) year work permit (2017 & 2018).
49. The Tribunal noted that in 2016, the Employer affirmed that the Company sought assistance from the DoI to complete the DoI Worker Permits application at Section 6 Statement of Employment at paragraph 3 – referencing the base rate figure per week and commission rate.
50. The Employer asserted that the DoI's instruction to the Company was to insert a base rate and commission, which continued and documented in every DoI Work Permit Application over a five (5) year period. The overarching instruction for Section 6 keynotes (that even if there is a separate Company Statement of Employment submitted by the Employer) the contents must be reflected as written and as the fine print on the Work permit Application denotes:
- Full time positions (e.g. salon/barber staff) tied to commission must reflect a base wage and percentage commission.*
51. On the matter of annual paid leave, at paragraph 5 of Section 6 of the DoI Work Permit Application Forms for Renewal, for the respective years as stated above - the posted paid annual vacation leave after one year of continuous employment was ten (10) days to conform with Section 12 EA 2000 as printed on the Department's Work Permit Form.
52. The Tribunal also focused on the fine print of DoI paragraph 6 of Section 6, where there is a statement on paid public holidays as set out in Section 11 of The Employment Act 2000 and, Schedule to the Public Holidays Act 1947.
53. If the Tribunal was persuaded to give the Employer the benefit of the doubt and consider that in fact, the Employee did agree to the August 2015 Statement of Employment Changes (the variation Agreement) and without reservations.
54. The Tribunal noted that aside from that signed variation agreement, the Employer had sight, on subsequent and successive DoI Section 6s Work Permit Application Forms, where it was clear that paid holiday and paid vacation leave are statutory requirements for all Employers to apply to all workers on work permits.

#### **Counsel's Written Submissions**

55. The Tribunal turned its attentions to the closing submission by the Employer's Counsel.

56. The Tribunal is persuaded that the Employee had the right to claim for unpaid wages (Unauthorized Deductions and Unpaid Annual Vacation), within three months after termination and with the authority of the Labour Officer, Labour Section.

57. As defined in the Interpretation (3) EA 2000, the definition of wages includes statutory pay for Public Holidays and Vacation Pay.

*"wages" means all sums payable to an employee under his contract of employment (by way of weekly wage, annual salary or otherwise) or otherwise directly in connection with his employment, including any commission, but not including—*

- (a) any tips or bonuses;*
- (b) any expenses;*
- (c) or the monetary value of any benefits in kind;*

58. While the EA 2000 allows for contracting out of paid Public Holidays, if the parties agree, the Tribunal was not presented with any evidence that the parties did agree to opt out over the period of the employment relationship from 2013 to 2021. Additionally, as per Part II Conditions of Employment as listed in the EA 2000, the Tribunal noted that there was no clause in the Company's Statement of Employment entitling the Employee to paid Public Holidays.

59. To emphasize this fact, in the 2014 Company Statement of Employment Company Regulations:

*Paragraph 4. To the extent that Government mandate changes to any of the conditions outlined above, in the future, the Company will comply with such regulations and will notify the terms and conditions outlined as mandated by Bermuda Law.*

60. The Tribunal recalled that the Employee stated in the Hearing that Bermudians working for the Company were paid for Public Holidays and had paid annual vacation leave, but not the Employee who was on a work permit.

61. The Employer's Counsel' reference to Section 2, Application 2(3) of the EA 2000, in arguing that the Employee's terms of employment were more favorable than provided by the EA 2000, has no weight. The Employee's contract terms for 2013 referenced: no base pay; a salary of 45% commission only and no public holiday pay.

62. And, the subsequent August 2015 (Change Agreement) voided vacation leave – taking it to zero (0) days. As such, the Employee's terms of employment were not more favorable than the Act allowed.
63. All statutory deductions were taken from the Employee's commission wages annually. This action instructs that regardless of any agreement by the parties to forego a base salary and work on commission only, as a bona-fide employee contributing to her own statutory benefits - the Employee was entitled to paid vacation and paid public holidays.
64. Further, there is relevant case law in Harvey on Industrial Relations and Employment Law – initially submitted by ██████████ in support of the Employer's right to make contractual changes – that points to the possible advantage of an employee to bring a claim for unpaid holiday/leave pay (under EA 2000 Section 8: Unlawful Deductions) - potentially allowing the Employee - in this case, to claim unpaid vacation pay.
65. The Tribunal is therefore satisfied that it is possible to refer to unpaid holiday and unpaid annual vacation pay as being accrued (upon termination), having not been paid to the Employee over the course of the employment contract, noting only a one-time vacation payment of \$600.00 BM dollars on the employee's one year of continuous employment (2013 – 2014).

#### **Statement of Employment Changes (Variation Clause) of 2015**

66. The ██████████ claimed that the Statement of Employment Changes Agreement (Variation Clause) of August 17, 2015 superseded the Employee's 2013 and 2014 employment contracts relating to a variation of the Commission rate clause from 45% to 50% and zero (0) days' vacation - as then signed by the Employee, constituted changed terms of employment, to be effective from August 2015 and remain in force over the life of the Employee's contracts of employment.
67. Counsel for the Employer stressed that by the Employee signing the 2015 Variation Clause, that this was an agreement to forfeit paid vacation. In actuality, removing paid vacation as a benefit in her employment.
68. In consideration of this argument, the Tribunal is satisfied that **EA 2000 Section 2 (3) – Application of the Act**, supersedes the August 17, 2015 variation clause Agreement offered by the Employer because, the terms of that Agreement were not only less favorable to the Employee, moreover, the Employer was legally barred from voiding her Employee's paid vacation leave.

## **Employee's Signatures**

69. In the Employer's closing submission, emphasis was placed again on the Employee's signature on the August 2015 Agreement variation clause - indicating that she knew what she was signing on the August 17, 2015 document. However, as persistent questioning of that Agreement by both Counsel and the Tribunal suggests, the Agreement's details were minimal and showed no indication that it would be effective for all future contracts of employment for the Employee. Specifically, that for as long as the Employee was employed, she would have zero (0) vacation days. Therefore, the Tribunal considers on the balance of probabilities that the Agreement in question was ambiguous to the Employee at the time of signing.
70. The Tribunals' concern was on the particular contractual variance of zero (0) vacation days as being potentially detrimental to the Employee; specifically, financially. The Tribunal's concern was further based on the Employee's testimony and in her closing submission, where she stated: *having to borrow money from the Company to use on her vacation.*
71. In the Employer's testimony, she admitted to financially supporting the Employee at various stages throughout her employment. Prima facie, there is evidence that the Employee was financially disadvantaged by contracts of employment that excluded a base pay, no paid vacation and no paid public holidays.
72. In closing submissions by Counsel for the Employer, emphasis was placed on the Employee's signature appearing on all Section 6s' of the Immigration document for Work Permit Renewals from 2016 through to 2020; the signatures indicating acceptance of the terms of employment for each subsequent contract of employment. However, the Tribunal could not overlook that:
- a) Both the Employer and the Employee's signatures were affixed to each DoI's Section 6 document;
  - b) That each DoI's Section 6 document included varying base rates, varying commission rates, consistent documentation of ten (10) days of paid vacation pay; sick leave allowances, and clearly outlined stipulations of the EA 2000 statutory benefits – specifically Public Holidays.
  - c) That requirements were for both parties to sign indicating the information submitted was correct.
  - d) And, that Counsel's arguments depicted the Employer as seeking guidance to ensure that the Company was operating within the law and based on the employment regulations set out in the EA 2000.

73. In considering the above-points: (a) through (d), the Tribunal was left to determine that either the Employee believed she was to receive the remuneration and benefits as listed on the Dol's Section 6s Statements of Employments - to which she and the Employer signed, or that both parties, and in particular the Employer - were dishonest in their 2016 to 2020 Immigration submissions.

74. However, the Tribunal was sufficiently satisfied that both the Employer and the Employee were aware of the laws supporting statutory deductions and statutory pay.

75. As is stated in the Company's Statement of Employment, clause: *Company Regulations*:

*To the extent that Government mandates changes to any of the conditions outlined above, in the future, the Company will comply with such regulations and will notify the terms and conditions as outlined, as mandated by Bermuda Law.*

#### **Raising the Issues of Base Pay and Vacation Pay**

76. At issue for the Tribunal was whether, throughout the course of the employment relationship, whether the Employee raised the issues of base pay and vacation pay, and in response, whether the Employer engaged the Employee and responded to her concerns. This is because Counsel for the Employer stressed during testimony by both parties - that the Employee did not protest to not receiving a base pay, nor did she protest to not receiving vacation pay. Counsel also attempted to raise doubt as to whether the Employee raised concerns of the matter to Immigration Officials or to the Labour Relations Office.

77. Counsel further raised doubt based on the fact that the Employee remained employed for a further five (5) years after the August 17, 2015 Agreement was signed.

78. In the Employee's testimony and closing submission, she stated that she asked about her terms of annual vacation leave pay on more than one occasion, at which time the Employer showed indifference to her concerns; but negotiated alternative remunerations each time.

79. The Employer testified that, had the Employee asked to see the terms of her employment, on any of the occasions that the matter was raised, that she would have shared the contents of the Contracts of Employment with the Employee, because the Agreements were housed in her office desk.

80. The Tribunal is convinced that based on the statements of both parties during their testimonies, that some degree of conversations was had about the Employee's concern toward her base pay and her vacation leave. The Tribunal's belief is cemented in the following:

- a) The Employee was not unaware of her intended benefits, because she signed her acknowledgment and agreement to such benefits each time, she signed a DoI Section 6 Immigration Work Permit Application Form.
- b) The Employer admitted that she sought direction from Immigration officials in 2016 regarding remuneration details to be inserted in Section 6s Work Permit Renewals document.

#### **Determination and Order**

81. Having given the Parties an opportunity to make submissions, it is the Determination of the Tribunal that:

- i. The Employer has offended those Sections 8 and 12 of the EA set out in the background above;
- ii. The Employee is owed outstanding Base Pay, Public Holiday Pay and Annual Vacation Entitlements in accordance with the Schedule set in the Order below.

#### **85. It is the Order of this Tribunal:**

- 1) The Employee is to be paid the amount of \$35,500 BM dollars for accrued Base Wages from August 2015 to February 2021.
- 2) The Employee is to be paid the amount of \$7,960.76 BM dollars for accrued Annual Vacation Leave entitlement from August 2015 to February 2021.
- 3) The Employee is to be paid the amount of \$8,311.97 BM dollars for Public Holidays from August 2015 to February 2021.
- 4) The Tribunal instructs the Manager of Labour Relations to use her good office to satisfy herself that all the Work Permit employees' Statements of Employment issued by the Company are compliant with Section 6 of the EA 2000.

The Employer has been warned that under S.44L of the Act

#### **Non-compliance with award**

*44L (1) Where any person fails to comply with an award of the Tribunal or any part thereof, a person that is directly concerned in or affected by the noncompliance (hereafter referred to as an "aggrieved person") may, and without prejudice to any remedy or relief to which any person may be entitled apart from this section, make a complaint to the Tribunal.*

(2) *If on a complaint made under this section the Tribunal finds that the complaint is wholly or partly well-founded, it may grant one or both of the following—*

*(a) an award of compensation to be paid to the aggrieved person;*

*(b) a general award of such sum to be paid to the aggrieved person as the Tribunal thinks fit;*

(3) *The amount of the compensation awarded under this section shall be such amount as the Tribunal considers just and equitable. such amount as the Tribunal considers just and equitable.*

(4) *Where the Tribunal finds that the non-compliance was to any extent caused or contributed to by any action of the aggrieved person it may not award any compensation or sum or it may reduce the amount of compensation or sum by such proportion as it considers just and equitable having regard to that finding.*

(5) *An award under this section may within a period of 30 days after the award has been made be recovered as a civil debt in the Supreme Court or in a court of summary jurisdiction by the person or party to whom the compensation or sum is awarded.*

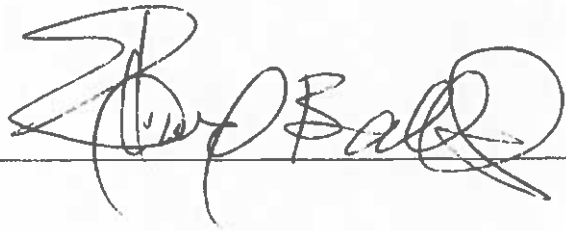
(6) *Without prejudice to any other provision relating to the Tribunal's power to grant an award under the Employment and Labour Code, no costs shall be payable in respect of proceedings before the Tribunal under this section.*

(7) *In subsections (1) to (5) of this section "person" includes a trade union*

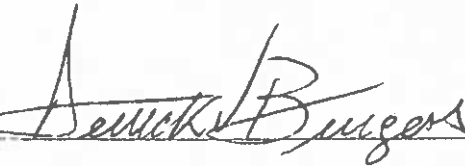
**The parties to this Hearing were reminded and acknowledged that the Determination and Order of this Tribunal are binding. It was also made clear that, in accordance with Section 440 of the Employment Act 2000, a party aggrieved by a Determination or Order of the Tribunal may appeal to the Supreme Court on a point of law.**



Edward Ball Jr.

A stylized, cursive handwritten signature of Edward Ball Jr. written over a horizontal line.

Derrick Burgess

A cursive handwritten signature of Derrick Burgess written over a horizontal line.

Lorrita Tucker

A simple, blocky handwritten signature of Lorrita Tucker written over a horizontal line.

Date: December 9<sup>th</sup>, 2021