IN THE MATTER OF THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT 2021 BEFORE THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL ("the Tribunal")

BETWEEN:

Union
(on behalf of Employee)

Complainant

-and-

Employer

Defendant

DETERMINATION

Date of Hearing 13th May, 2022

Members of Tribunal: John Payne, Chairman
Robert Horton, Deputy Chairman
Valerie Young, Tribunal Member

Complainant: Union on behalf of the Employee

Defendant: Employer

In Attendance: Union Counsel
Employer Counsel

Witnesses for Union: Employee, General Secretary ("GS")

Witnesses for Employer: The Employer
W1
W2

Background

1. The Union has filed a complaint under provisions of section 66 (2)(b) of the Trade Union and Labour Relations (Consolidation) Act 2021 ("the Act") that the employment of a member, the Employee, was wrongfully terminated.

2. The Union is seeking: -

    a. Retroactive reinstatement of the Employee's employment with the Employer, inclusive of all benefits.
    b. A declaration that the 1981 Agreement between the Employer and the then Union [now the Union] regarding XXXXXXX of an officer to the XXXX is still valid.
    c. The Employee's continued XXXXXXX to the Union for a further two years.
    d. Compensation to the Union for legal costs incurred in bringing this action.

History

3. The Union represents workers with the Employer. In this instance, the Employee is a XXXXX, is the XXXXX of the Union and had been XXXXXX to the office of the XXXX for the XXXXX year 2020/21.

4. The Union sought an additional two (2) years' XXXXXXX, quoting as precedent a 1981 Agreement between the then Union, the Union's predecessor, and the Employer. The Tribunal notes that the only record of such Agreement is a copy of minutes from an XXXX membership meeting dated 14th December 1981.

5. There is no other document that confirms that this was to be a perpetual Agreement. However, it has been the practice since 1981 for a worker/XXXX officer to be XXXXXX to the office of the then XXXX, then the XXXXX for up to three (3) years. In this regard, the Tribunal notes that from 1982 to 2021, six workers/XXXXX officers, not including the Employee, were XXXXXX to the office of the then XXXX or XXXXX: one for one year, four for three years and one for three years and four months.

6. The Employer took the view that as there was no record of the Agreement being perpetual, the Agreement was no longer valid and refused the Union's request for the Employee's XXXXXXX to be extended, citing the need for the Employee to return to her role as XXXXX of XXXXXX at the workplace due to a shortage of workers with her skill. Consequently, the Employee was instructed to report to the workplace on Monday, 1st November, 2021.

7. The Employee did not report to the workplace as instructed on Monday, 1st November, 2021, nor did she respond to various emails to attend meetings or give reasons for her absence. The Employer then invoked the XXXXXX Section 7.4.4: *"An XXX who is absent from duty without permission or without reasonable cause renders himself/herself liable to disciplinary action. The onus will rest on the Employee to show that the circumstances do not justify such action being taken. Where an Employee is absent from duty without leave or reasonable excuse for a period exceeding five working days, he/she shall be deemed to have resigned."*

8. The facts of the matter are not in dispute.

The Hearing

9. This matter is essentially in two parts with the parties' roles being different. Reference to the 1981 Agreement and XXXXXXX revolves around the Union and the Employer representing the XXXXXX as specified by Collective Bargaining Agreements [CBAs]. Disciplinary matters regarding an Employee serving the Employer are addressed by the XXXX as delegated by the Legislation.

10. It may have been more appropriate for there to be two separate hearings to avoid ambiguity. However, that was not addressed earlier in the process.

Authority to Hear

11. The Chairman, having reviewed the various documents presented to the Tribunal, questioned the Tribunal's authority to hear the matter of "discipline". He indicated that documents cited specified conflicting processes for the handling of grievances/discipline.

12. The documents include:

    a. Policy and Procedures Manual for XXXXXXX Staff, 10th April, 2006. 13.3 Disciplinary Procedure for XXXXX in XXXXXXX.

    b. XXXX for XXXXXX Rules 1974, section 33(4): *"The maintenance of good order, discipline and efficiency is a major responsibility of the XXXXXX, who has the power to initiate disciplinary proceedings against any XXXXXX employed in his XXXXXX."*

    c. Collective Bargaining Agreement between the Employer and the Union, 1st September, 2018 – 31st August, 2020. Schedule 4 (1), Grievance Procedure in XXXXX, Step 3: *"A XXXX, with or without Union representation, may submit the grievance to a Tribunal or to a*

single arbitrator. A Tribunal shall be persons selected jointly by the XXXXX, or Union acting on his/her behalf, and XXXXX…"

d. XXXXXXX Agreement [unsigned] of 17th February, 2021 between the Employer, Union and the Employee. Paragraph 22.1: "In the event of a dispute or grievance involving the XXXXX, the parties shall revert to the Employment Contract to resolve." Paragraph 22.2: "…*The procedure to be followed shall be that as laid down in the Bermuda International Conciliation and Arbitration Act 1993…*"

The Employer's Case

13. The Employer's case was presented before the Tribunal principally by the Employer whose witness statement was found at Tab 1 of the Employer's bundle. The Employer witness statement was accepted into the record.

14. In his letter of 7th July, 2020, the Union's General Secretary at the time made a request to have the Employee XXXXX to the office of the XXXX. He wrote: "*Precedent will show that past officers of this XXXX have been XXXXXX to this office. We submit this request on behalf of our XXXXXXX. XXXXX was selected to office in October of 2019. Her term of office ends in October 2021.*"

15. In her response of 24th August, 2020, the Employer acceded to the XXXXXXX request for the 2020/21 XXXXX year.

16. In his letter of 20th July, 2021, GS, citing precedent, requested an additional two years' XXXXXXX [XXXXX years 2021/22 and 2022/23] for the Employee.

17. Evidence was sought regarding the validity of the 1981 Agreement upon which the Union's precedence argument was based. In his letter of 4th October, 2021 to the Employer, GS quoted the following extract from the minutes of the then Union membership meeting of 14th December, 1981: *6. NEGOTIATION (1) Paid XXXX – XXXXXX had agreed a 3-year XXXX officer. Details of this would be worked out in joint consultative meetings."* No other document was found to support the precedence claim. The Tribunal took note of those minutes.

18. The Employer took the position that the 1981 Agreement was no longer valid as it had not been perpetuated in successive CBAs between the Employer and the Union. The Employer therefore denied the request for a two years' extension, in her affidavit, relevant paragraphs noted below, expressing the view that

a. The Minutes of 1981 reflected a "tentative agreement". [Paragraph 13]
b. The current Agreement between the Employer and the Union did not provide for provisions in previous Agreements or the 1981 Agreement with the then Union to remain in force; neither did it provide for XXXXXXX. [Paragraph 14]
c. XXXX for XXXXXXX did not provide for XXXXXXX, neither did the Policy and Procedures Manual for XXXXXXX Staff. Paragraph 15 does not provide for XXXXXXX. [Paragraph 15].

19. The Employer acknowledged that XXXXXX of 1st June, 2021 provided for XXXXXXX. However, she maintained that "*An Employee requires permission to be on XXXXXXX which is discretionary and it can be refused depending on the exigencies of the office.*"

20. The Employer maintained that as the Employee was expected to return to her substantive post at the end of the XXXXXXX and did not grant permission for her to be absent from her post. In this regard, on 29th October, 2021 the Employer wrote to the Union indicating that the Employee was to report for work at the workplace on 1st November, 2021. Upon learning that the Employee had failed to report to the workplace as instructed on 1st November, 2021, the Employer wrote to the Union on 10th November, 2021 advising that as the Employee had not reported to the workplace as instructed in 1st November, 2021, she was regarded as absent without permission and would be liable to dismissal if she failed to report to work on 12th November, 2021.

21. When the Employee failed to report to work at the workplace on 12th November 2021, W2 wrote to her directing that she reports to work on 17th November, 2017. The Employee failed to report to work on 17th November 2021 as instructed.

22. On 23rd November 2021, W1 wrote to the Union advising that the Employee was to attend a meeting at the Employer on 1st December 2021 to submit evidence which might explain her absence from her duties at the workplace. The Employee failed to attend the meeting of 1st December 2021.

23. On 9th December 2021 the Employer wrote to the Employee requesting that she meet with her the following day to explain her absences from the workplace and advising her that if she failed to attend the next day's meeting, she would be deemed to have resigned pursuant to provisions of paragraph 4.5.5 of the XXXXXXX.

24. The Employer maintained that she had not terminated the Employee. Instead, she had followed provisions of section 33(13) of XXXXX for XXXXXXX 1974, Paragraph 7.9 (b) of Policy and

Procedures Manual for XXXXXXX Staff and Paragraphs 4.5.5 and 4.6.1 of the XXXXXXXX. She maintained that she was adhering to all policies and procedures in addressing the Employee matter.

25. On 6th January 2022 the Employer wrote the Employee informing her that it was deemed that she had resigned from the Employer and that her resignation had been accepted with effect from 10th December, 2021.

26. The Tribunal expresses surprise that the Employer had not attended a meeting with the XXXXXXXXXXXXXXX and the Union to discuss the XXXXXXX dispute. The Employer acknowledged that she had been invited to the meeting and had informed the XXXXXX that she would not be in attendance. She informed the Tribunal that the matter was a staffing one and, therefore, outside the purview of the XXXXXX whose function was to address policy, hence her absence from the meeting. She reiterated that she was responsible for operations and staffing.

27. The Employer indicated that she had not discussed the XXXXXXX matter with her XXXXX, nor had she consulted any other authority.

28. The Tribunal heard testimony from two other Employer witnesses W2 and WI.

UNION's Case

29. The Union Counsel provided a brief summary of the Union's case, making the point that the Employer was wrong in ignoring the custom and practice established for some forty years whereby workers/XXXX officers were XXXXX to the Office of the XXXX for three-year periods. He said that there were no grounds for the termination of the Employee's services as a XXXXXX in the Employer and that she should be reinstated without delay. He said that the Union would call two witnesses, the Employee herself and GS, the latter via Zoom as he was in quarantine.

30. The Union Counsel posited that there was a long-standing arrangement between the Union and the XXXXXX that allowed XXXX officers to be XXXXXX from the Employer for a period up to three (3) years ("the 1981 Agreement", paragraph 4). This agreement permits a XXXXXX who held the position of officer to return to his/her post after completing the period of service at the XXXXXX office.

31. The Union argued that the Employer had unilaterally determined that the Employer was not bound by the 1981 Agreement (paragraph 6) and that via her letter of 6th January 2022 she had wrongfully informed the Employee that her employment had been terminated. Following is an excerpt from the Employer's letter of 6th January 2022 to the Employee: "*You did not report to the XXXXXXXXX on 10th December 2021 at 10:00 am as requested. Therefore, I write to inform you that your resignation is accepted in accordance with the XXXXX for XXXXXXX 1974, and the Policy and Procedures Manual for the XXXXX Staff. The XXXXXX will be advised to process your termination so that payments due to you can be made. The effective termination date will be 10th December 2021.*"

32. During her testimony before the Tribunal, the Employee acknowledged that she had received from the Employer a number of letters requesting that she report to her substantive post at The workplace on 1st November 2021 and dates thereafter and that she had failed to report as instructed because of the unresolved dispute between the Union and the Employer regarding the XXXXXXX issue. She said that she believed that the real reason for the Employer's decision to terminate her related to her XXXXXX, in particular her strong criticism of the Employer because of its Covid- 19 policy relating to the opening of XXXXX in January 2022.

33. The Employee acknowledged that her failure to report to the workplace on 1st November 2021 as instructed could not be attributed to medical leave. Additionally, at paragraph 11 of her witness statement she stated that she "*did not return to XXXXXX in large part because, in (her) capacity as XXXXXXX, (she) was actively advocating for the ability of future XXXXX officers to continue benefitting from the 1981 Agreement.*"

34. The Employee rejected the suggestion that she had simply ignored the requests to report to her substantive role at the workplace. She said that she had made unsuccessful attempts to speak with the Employer via telephone to discuss the unresolved issue of her XXXXXXX. During cross-examination, the Employee admitted that she had not left a voice message for the Employer and admitted further that in hindsight she could have sent/copied information to the Employer.

35. The Employee said also that she had been unable to raise the matter at JCCs because the Employer was not in attendance at those meetings. Finally, she said, she had reached out to XXXXXX and XXXX in the hope that their intervention would lead to resolution of the matter and received assurance that the outstanding issue of XXXXXXX would be addressed.

36. At paragraphs 29 and 30 of her witness statement, the Employee wrote as follows: "*On 10 December 2021, I discussed the XXXXXXX letter and her refusal to acknowledge the broader issue concerning the XXXXXXX with the XXXXXX. The XXXXXX wrote to me on the same day stating "I have requested a meeting on Monday [13 December 2021] or as soon as possible with the XXXXXXXXX, [XXXXXX], and myself as per our conversation this morning. Once confirmed, the Union will be sent the meeting date and time. On 13 December 2021 this meeting...took place to discuss the issue of the XXXXXXX dispute. The XXXXXX did not attend despite, presumably being invited to do so (per the XXXXX email). At that meeting, as recorded by the XXXXX in an email dated 13 December 2021, the Union were advised that the XXXXX would give consideration to either 'adhering to the former process of allowing an officer to be XXXXXX for a 3-year period; or b. meeting to agree the details of a MOU with respect to the XXXXXXX of the Union XXXXX'....The clear indication was that the XXXXXX demands had coalesced at the level of the XXXXX and that attempts were being made to resolve the issue. I waited to hear from the XXXXXX, as requested.*"

37. Neither the Union nor the Employee received any further feedback from XXXXXX before issuance of the Employer's letter of 6th January 2022.

38. During an exchange with the Tribunal, the Employee admitted that she was not familiar with some of the documents relating to XXXXXXX delegation of authority and that they were applicable to workers as XXXXXXX. She confessed that this was quite a learning experience for her.

39. The Employee is seeking reinstatement to her position within the Employer.

Tribunal's Deliberations

40. The Tribunal examined closely the bundle of written submissions and the supporting annexes submitted by both the Union and the Employer in relation to their respective cases. The Tribunal considers that there were four principal issues to be considered:

    I. Was the 1981 Agreement between the Employer and the Union valid?

    II. Did the Employer have the authority to instruct the Employee to report to the workplace on 1st November 2021?

    III. Was the Employee correct in her assessment that based on custom and practice, she was entitled to have her XXXXXXX extended for a further two years and that she did not have to report to the workplace as directed?

IV. This matter was not a straightforward employee/employer matter as the Employee was an official of the XXXXXX. Did this fact influence the Employer's decision to terminate her services?

I Was the 1981 Agreement between the Employer and the Union Valid?

41. The Tribunal accepts that the 1981 Agreement was a major influencer in each party's decision-making. However, the Tribunal notes that there had been a general lack of consideration to detail during the preparation of subsequent CBAs as it was normal negotiation practice to continue an article or schedule in subsequent Agreements if there was the intention of the practice/benefit to be continued. If one relied on custom and practice as a basis for the validity of the 1981 Agreement, the question should be asked as to why the 3-year XXXXXXX provision was not contained in all successive CBAs.

42. Union Counsel in his presentation cited Selectron Scotland Ltd v Ms. G N Roper & Others [2004] IRLR 4 in support of the Union's case: *"A custom or established practice applied with sufficient regularity may eventually become the source of an implied contractual term. That occurs where the point is reached when the courts are able to infer from the regular application of the practice that the parties must be taken to have accepted that the practice is crystallised into contractual rights."* The practice of XXXXXXX was an agreement between the Union and the Employer. However, while regular, it was not fulfilled consistently in that duration of the XXXXXXX appears to vary in length for different officers.

43. The letter dated 28th February 1984 from the then XXXXXX of XXXXX to the then Union Organizer clearly set out the conditions of the XXXXXXX.: *"one year's leave of absence renewable up to a maximum of three years at the time of the year when the XXXXX normally makes decisions on XXXX appointments"*. This provision makes clear that an extension of the XXXXXXX to a period of two or three years was not automatic.

44. The Employer does have the authority to approve XXXXXXX. The XXXXXXX Agreement I Definitions "Sending Party" means *the XXXXXXXX as the Employer of the XXXXX.*

45. Approval of the XXXXXXX is the responsibility of the Employer or the XXXXXX even though, as noted by the Employer's Counsel during the hearing, it was not contained in the CBAs between the Employer and the relevant Trade Unions.

46. The Tribunal finds it surprising that without documentation the Employer granted XXXXXXX as often as it did. No documentation was provided by either party to show the legal basis for the XXXXXXX. The granting of the XXXXXXX seems to have been discretionary on the part of the XXXXX .

47. The Agreement between the Employer and the Union dated 1st September 2018 - 31st August 2020 states at ARTICLE 1 Purpose: "*To set out an agreement regulating salaries, hours of work, and other conditions of employment, in order to protect and advance the general welfare of XXXXXX, to ensure good relations between XXXXXX and the XXXXXX, to secure prompt and fair disposition of any grievances which may occur in the course of those relations, and to achieve the highest level of efficiency consistent with sound XXXXXX policy*".

48. The absence of a discussion between the Employer and the Union of the matter of the XXXXXXX of a XXX worker/XXX to the office of the XXXXX over the past forty years is not good or conducive to harmonious working relations. The Tribunal is persuaded that collective bargaining as outlined in the ILO Convention 98 is intended to permit fair and open dialogue between the parties involved. Further, the Trade Union and Labour Relations (Consolidation) Act 2021 5 (1) (b) encourages and sets out the regulations between workers and employers. XXXXXXX fits that provision.

49. Reference was made to the JCC meetings and the Employer's non-attendance at some of those meetings in late 2021. The Policy and Procedures Manual for XXXXXXX Staff dated 10th April, 2006 at 14.10 Constitution Joint Consultative Committee - Union (b) (i): *Membership includes the XXXX of XXXXX, Chief XXXX Officer and XXXXX President*" inter alia. In fact, 14.10 (b) (ii) states that "*the XXXXX and President, XXXXX, will chair the Committee in rotation.*" Here it is to be noted that the post of Chief XXXXX Officer is now restyled as XXXXXXX.

50. Section 14.10 (a) Terms of Reference (ii) states:" the *(JCC) is not a negotiating body and does not determine matters of policy; it is rather a forum for discussion outside the negotiating framework*". Clearly, then, the matter of the 1981 Agreement could have been raised during a JCC meeting, XX absence from the meeting notwithstanding. The Tribunal noted with regret that the opportunity was lost to address the XXXXXXX issue during JCC meetings.

51. The currently contentious matter of the XXXXXXX of a worker/XXXX officer to the XXXXX office is a subject that must be addressed between the parties as a negotiated item, with the full process of conciliation and arbitration used if needed. For clarity, the discussion should be between the Employer and the Union, not between the Employer and the Union.

II Did the Employer have the authority to instruct the Employee to report to the workplace on1st November, 2021?

52. The Employee is a XXXXX at the workplace, a worker with the Employer. Thus, she is an Employee as defined by the legislation 2001. This matter was disposed of by Justice Kawaley in Finn-Hendrickson v XXXX of XXXX 2008. In paragraph 18 of his judgment, the Learned Justice states: *"as discussed in the XXXXX case, XXXXX are XXX and the power to terminate a XXXX employment has been delegated to the XXXXX of XXXXX".*

53. The legislation, paragraph 5, Schedule to the XXXXXXX, now delegates all the powers of the XXXXX to the XXXXXX. The XXXXXX in this case is the XXXXXXXXXXX.

54. There can be no dispute that the worker is an Employee and that she is subject to direction of the Employer.

III Was the Employee correct in her assessment that based on custom and practice, she was entitled to have her XXXXXXX extended for a further two years and that she did not have to report to the workplace as directed?

55. The Employee received a contract for XXXXXXX in 2020, although she did not sign it. Nonetheless, the XXXXXXX came into effect in October 2020 when she commenced work at the XXXXXX office, the Union having received the Employer's letter of 24th August, 2020 granting the Employee's XXXXXXX for the 2020/21 XXXX year. This must be seen as recognition that the XXXXXXX contract was in force. Further, the Union's letter of 20th July, 2021 requesting an extension of the Employee's XXXXXXX) must be seen as the Union's acceptance that the XXXXXXX was for one (1) year and not (3) three years.

56. At no time was there an agreement that the XXXXXXX would be extended. However, after the end of the 2020/21 XXXX year the Union in its letter of 20th July, 2021 wrote to the Employer requesting that the Employee's XXXXXXX be extended for an additional two years. There is no evidence before the Tribunal that the Union had questioned the fact that the Employee had been granted XXXXXXX for only one year or had argued that it should be of three years' duration.

57. Upon reviewing the XXXXXXX document, the Tribunal opines that it was not the appropriate document to use. XXXXXXX in the XXXX are generally between XXXXX or a Department

and a private sector organization. In this instance, the XXXXXXX was with a Trade Union and a different process was required.

58. Relationships between the Employer and the Union are based on a CBA and provisions of the Trade Union and Labour Relations (Consolidation) Act 2021. There is no provision in the current CBA between the Employer and the Union that refers to XXXXXXX.

59. Article 3 XXXXX Rights in the 1st September 2018 – 31st August 2020 CBA between the Employer and the Union articulates at (c) *"the assignment, reassignment and voluntary transfer of XXXXXXX shall be based upon an established set criteria...and (d) the Union agrees that XXXXXXX shall abide by the various regulations established by XXXXX."*

60. Even if the Employee believed that she was entitled to an extension, there is a generally accepted union principle that on receipt of a legitimate instruction from a supervisor, the worker should comply, but file a grievance. During an exchange with the Tribunal, the Employee stated that she was unaware of this principle.

61. The Employee said that she was also unaware that the XXXXXXXXX and XXXXXXX applied to workers. She indicated that the entire process was a learning one for her.

IV This matter was not a straightforward employee/employer matter as the Employee was an official of the XXXX. Did this fact influence the Employer's decision to terminate her services?

62. Article 9 *Union Business and Collection of Dues*, appears to be the only article in the CBA that specifies time off allocated for workers to carry out their duties as XXXXX officers. There is no reference to an "Agreement".

63. *Article 7 Renewal or Amendment of Agreement* states at Step 1: *(a) as regards the renewal or amendment of existing agreements, unless otherwise prescribed by such agreements, either party should give the other party written notice at least two (2) months prior to the termination of the current Agreement..."* There was no evidence before the Tribunal to show that the Union or Employer included in any subsequent CBA or other agreement the item at 6 *Negotiations* (1) in the 1981 Agreement.

64. Upon viewing 6 *Negotiations* (1) in the 1981 Agreement, the Tribunal noted that the clause was not specific to the position of XXX XXXXX. One is left to conclude that the XXXX could apply this provision for any of its XXXXX. Further, Article 9 in the CBA clearly specifies time allocated for officials to work for the XXXXXX.

65. The Union filed a grievance regarding the non-extension of the XXXXXXX by the Employer. The Union by letter from GS to the Employer dated 29th October, 2021 advised: *As you are aware, the matter of the XXXXXXX is in dispute. Therefore, I write advising that the position of the Union is that the XXXXX remains in office pending the ruling of the same."*

66. The inference here is that the filing of a grievance automatically causes a stay of any action. This is not normal practice as it is practice that once a lawful instruction has been given, then it is carried out while the grievance process is underway.

67. The Employee should not have had any special expectations because of her position with the XXXXX.

Conclusion

The Tribunal, having considered the oral and written submissions, concludes as follows:

1. Harmonious industrial relations are dependent on give and take and the ability to compromise. Adherence to the letter of the law is not always in the best interests of an organization or the community.

2. The matter of the validity of the XXXXXXX to the Union office provision in the1981 Agreement was integral to the deliberations and a request for a resolution sought. However, the Tribunal believes that the most appropriate process for settlement of the matter is by means of negotiation/collective Bargaining between the Union and the Employer. It is not for the Tribunal to decide on its validity.

3. The Employer had the authority in law and regulations to conclude that the Employee had resigned by being absent from work for more than five (5) days.

4. The Employee was first and foremost an Employee as articulated by Justice Kawaley in Finn-Hendrickson v XXXX of XXXXX 2008. Therefore, she had a responsibility to follow the legitimate instructions from a supervisor, in this case XXXXX, whether she agreed or not.

5. In the Tribunal's view, the Employer's attendance at the 13th December, 2021 meeting called by the XXXXXX might have led to resolution of this very serious matter. The Tribunal is disappointed at the Employer's refusal to attend the meeting when she must have known that her presence would likely have led to resolution. Further, the Tribunal is astonished at the Employer's refusal to attend a meeting to which she had been invited by the XXXXXX.

6. The instruction that the Employee was to report to work at the workplace was a legitimate instruction from the Employer and should have been obeyed. The Employee admitted that in hindsight she should have made contact/responded to e-mails as asked. She was naive in her belief that the involvement by senior XXXXX persons would have the certainty of resolving the matter in her favour because she was a XXXXX officer.

7. Nonetheless, the Employee was understandably optimistic that the matter of XXXXXXX would be resolved in the Union's favour following the meeting of 13th December, 2021 attended by the XXXXX, XXXXX XXXX, Union officials and others. The Tribunal agrees that the XXXX e-mail of 13th December, 2021, sent following the 10th December, 2021 meeting in which the 1981 Agreement and XXXXXXX were discussed, gives the impression that the XXXXXXX and the Employer's threatened disciplinary action should The Employee not report to the workplace were being actively considered by the XXXXX, the Employer's absence from the meeting notwithstanding. Specifically, in that e-mail the XXXXXX wrote: "*Finally, it was agreed that the XXXX would give consideration to either: a. adhering to the former process of allowing an XXXX to be seconded for a 3-year period; b. meeting to agree the details of a MOU with respect to the XXXXXXX of the Union XXXXX.*"

8. It appears that the dual roles of the worker as an Employee and a XXXXXX senior official were central to the Employee's decision not to report to the workplace as instructed by the Employer. However, this dual role seems to have been given no consideration by the Employer.

9. Termination of the services of the Employee would have the potential of having a negative impact upon the XXXX of the XXXX at the workplace specifically and in the Employer generally, as the Employer informed the Tribunal that the Employee was the only qualified Bermudian worker of XXXX in the XXXXXXX. The Employer would suffer a considerable loss were her services to end. Further, the Tribunal, having reviewed the Employee's curriculum vitae that was submitted in evidence, recognizes that she was a highly qualified and extremely experienced worker of XXXX.

Determination

1. is to be reinstated immediately as a in the

2. The will not compensate for the time off from 1st November 2021 to the time of her reinstatement as within he

3. The matter of pension entitlement is to be addressed by the provisions of the

4. The matter of the validity of the 1981 Agreement should be resolved through negotiations between the and the such negotiations to commence immediately.

5. The parties to this hearing have acknowledged that the determination of this Tribunal is final and binding. Any party aggrieved may, however, appeal to the Supreme Court of Bermuda on a point of law.

6. The Tribunal makes no further determination in this matter.

Dated this 24th day of June 2022

John Payne
Chairman

Robert Horton
Deputy Chairman

Valerie Young
Tribunal Member