

IN THE MATTER OF
THE EMPLOYMENT ACT 2000 (The Act)
BEFORE THE EMPLOYMENT AND
LABOUR RELATIONS TRIBUNAL (THE TRIBUNAL)

BETWEEN

- COMPLAINANT

AND

/ - EMPLOYER

Hearing Date: 6th December 2022

Tribunal Members: The Hon. Derrick V. Burgess, JP, MP, Chair
Mr. Peter L. Aldrich, Deputy Chair
Mrs. Yolanda Outerbridge, Tribunal Member

Present: Complainant
Employer
witness for the Employer

The Dispute filed under the Employment Act 2000 (the Act), pursuant to Section 37 (4) of the Act.

The Complainant is seeking the following:

1. Wages in the amount of \$7,560.00
2. Vacation Pay in the amount of \$1,440.00

The agreed terms of reference for the Employment and Labour Relations Tribunal is to determine whether the Complainant is due vacation and wages/overtime pay.



STATEMENTS EXCERPTED FROM THE COMPLAINANT, DATED 5TH DECEMBER 2022

1. Commenced employment on 22nd July 2021.
2. Signed the Immigration (Employer EXH8) page 13 in Statement of Employment, to work 50 hours even though I know in Bermuda anytime over 40 hours should be paid at time and a half.
3. I have worked sometimes 60 hours to 72 hours a week and no break.
4. He states that he was not paid for 2 days sick.
5. The Employer, , produced another /different contract which I felt pressured to sign.
6. I am not familiar with the laws and I feel that I have been mistreated of my working conditions as a guest worker in the country/Bermuda.

THE CASE OF THE EMPLOYER - NS

1. The Complainant was hired as Chef de Partie for a work week of 10am to 10pm, for a flat rate of \$800 net. Employer states (p2) that **Employees did not understand the 'minimum 50 hours' conversation so I gave up trying to explain as we open and had to run operations.**
2. We agreed to pay because Chefs were working short(staff) for a 2-hour break, even though staff were entitled to a 1 hour break.
3. Therefore, we paid a total of \$732.00 in November for working short without a break in August.
4. Our Head Chef started on 1st September, so the team was no longer working short. As it relates to getting his payment in November, I was transparent about our financial position in my early meeting with the team in August. I met with and told him as soon as we got some extra cash, we would start paying him for the hours, which we did.
5. Pay Structure (p3): The Complainant) agreed to a flat rate of pay of **\$800.00 net per week for a minimum of 50 hours.**
6. Approved Vacation December 2021 (p5): The Complainant () contract start date was 22nd July 2021 and termination date was 22nd July 2022. It should be noted that he did not complete a full year/one year as he walked out on his last day during the afternoon service on Friday, just after 5pm, citing that he had not been paid – which



was incorrect as I do the payroll transfers and had completed his transfer by 11:54am. Mr. [redacted] was scheduled to work until close which would be 10pm. Therefore, his contract would terminate as per our Schedule, on the last day which is 10pm or closing time. [redacted] did not complete his last day of employment.

7. EX3 Management, 13th December 2021, 1:11pm: In an email to the management, the Complainant [redacted] informed or reminded management that he consistently has taken on extra hours, 50 to 72 hours and was requesting an increase to \$25 an hour.

Management Reply – You, the Complainant, agreed for a flat rate of \$800 (net) per week for a minimum of 50 hours per week and that your rate of pay can be revisited subject to performance and conduct renewal of your work permit.

Therefore, under the uncertainty in the economy due to Covid-19, we are willing to approve your request to change your rate of pay from a flat fee of \$800 (net) per week to hourly pay rate of \$18 per hour, minimum of 40 hours per week.

EMPLOYER WITNESS –

Employed October 2021 to April 2022

1. Stated that during slow season (January – March) day commenced at 10:30am, then a break from 3pm to 5pm, return until closed. Sometimes they closed early, 8:30pm. During this period, weekends are usually busy. In November, they worked 60 hours per week.
2. The [redacted] was closed on Mondays – (staff day off).
3. During slow season, they worked 50 hours per week and in the busy season, they worked 60 hours per week – we worked 6 days a week, no overtime pay.

STATEMENT OF EMPLOYMENT SIGNED BY THE COMPLAINANT AND THE EMPLOYER

6th JULY 2021 – EXH8

1. Remuneration base rate at \$800 per week
2. Hours of work 10am to 10pm, with a 2 day rest period, with shift work – normal shifts
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3. Vacation, Sick Leave, Public Holidays – as per the Act.

EMPLOYMENT CONTRACT – EXH40

Rate of Pay – refer to Schedule I - \$800 net



Hours of Work – you **will only be paid for the hours that you work.** Your hours of work **will generally be higher during peak season,** typically April to October, **and may fluctuate** and be reduced as our season slows down, typically November to March.

PUBLIC HOLIDAYS

The Restaurant will open all Public Holidays, except for Christmas, Boxing Day and New Year's Day – compensation for work performed on Public Holidays **will be at your normal rate of pay.**

Employment contract signed by Complainant () and Employer ().

DELIBERATIONS

1. The contract signed by the Employer and the Employee on 2nd October 2021 (Employer Ex 40) contravened the Act, Part I, Section 2(3) Application.
2. Part II - Conditions of Employment - Section 6 (1) states - *Not later than one week after an Employee begins employment with an Employer, the Employer shall give to the Employee a written Statement of Employment which shall be signed and dated by the Employer and Employee. Sections 2f, g, gb were violated by the Employer.*

Section 6(7) states – *An Employer who contravenes this section shall be liable to a civil penalty as may be imposed by the Manager or the Tribunal.*

3. Overtime - Section 9(1) states – *Any hours worked by an Employee in excess of 40 hours a week shall EITHER –
 - a) be paid at the overtime rate; or
 - b) be paid at the employee's normal hourly wage and compensated by giving him the same number of hours time off in lieu.*
4. Part III - Public Holidays – Section 11(2) states - *An Employer shall grant every Employee a holiday with pay on each public holiday falling within any period of employment.*
5. Vacation Leave – Section 12(1) states – *An Employee shall be entitled to a period of 2 weeks annual leave AFTER he has completed -
 - a) the first year of continuous employment*

Section 12 (1A) states - *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.*



THE TRIBUNAL'S DECISION

1. The Complainant () is awarded 2 weeks' vacation pay, at \$800.00 per week, in accordance with the Act.
2. In accordance with the Act, the Complainant () is entitled to overtime pay based on the following:
 - Normal hourly rate of \$20.00
 - Overtime hourly rate is \$30.00 (1½)

As per the Employee payroll stubs (submitted by the Employer), the Complainant () is entitled to the difference of \$3,730.00, in overtime pay.

As this matter pertains to a violation of the Act, Part II, Section 2 (f, g, gb), we, the Tribunal impose a civil penalty of \$500.00.

Section 44M (5) states – *A person upon whom a penalty is imposed under subsection (3) who does not appeal shall within 21 days either –*

- a) *Pay the penalty; or*
- b) *Pay a portion of the penalty and apply to the Manager for a payment schedule for the remainder.*

Appeals - Section 44O (1) states – A party aggrieved by the determination, order, declaration or other decision of the Tribunal may appeal to the Supreme Court on a point of law.

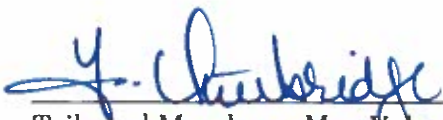
Dated this 13th day of December 2022



Chair – The Hon. Derrick V. Burgess, JP, MP



Deputy Chair – Mr. Peter L. Aldrich



Tribunal Member – Mrs. Yolanda Outerbridge

