

EMPLOYMENT & LABOUR RELATIONS TRIBUNAL

DISPUTE FILED UNDER

EMPLOYMENT ACT 2000

PURSUANT TO PART VA SECTION 44B

LARI SIMMONS

THE EMPLOYEE

And

THE EMPLOYER

DATE : March 25th, 2024

**PANEL : Edward Ball Jr, JP, LLB, FCMI Chairman
Derrick Burgess JP
Valerie Young**

DETERMINATION & ORDER

EMPLOYMENT & LABOUR RELATIONS TRIBUNAL HEARING

BETWEEN:

LARI SIMMONS

The EMPLOYEE

-And-

The EMPLOYER

Members of Tribunal: **Edward Ball Jr.**
 Derrick Burgess
 Valerie Young

Tribunal Hearings **March 25th, 2024**

Places: **Department Labour**
 23 Parliament Street
 Hamilton HM 12.

Matters of Dispute:

Section 29 Constructive Dismissal
Section 38(3) Hearing of Complaint by Tribunal
Section 39 Remedies
Section 40 Unfair Dismissal

Directions Hearing: December 5th, 2023

Complainant Lari Simmons (The Complainant)

Defendant: (Representative) and Dr.

PROCEDURAL AUTHORITY TO HEAR AND EVIDENTIAL MATTERS

1. The Chairman confirmed the points to be considered by the Employment and Labour Relations Tribunal ('*the Tribunal*'). The Chairman stated that the Hearing was to be conducted by **Section 44B(2), Section 44C the General Powers, section 44D Power to Obtain Information**, and that the Tribunal shall regulate its proceedings as it sees fit, pursuant to **Schedule 2 (20) of the Employment Act 2000 ("the Act")**. As stated at the Directions Hearing, there was to be no secret taping or cellular phone recordings of these proceedings without the permission of the Tribunal.
2. In the Directions Hearing held on December 5, 2023, the Parties were offered the opportunity to meet without the Tribunal's assistance, engage in meaningful dialogue, and attempt to reach a Settlement Agreement to their dispute. The Employer did wish to engage in a Settlement discussion but without success. Therefore, both Parties agreed for the matter to be settled at the scheduled substantive Tribunal.
3. At the substantive Tribunal of March 25, 2024, the Chairman afforded the Parties a further opportunity to discuss and to engage in meaningful dialogue without the Tribunal's assistance in an attempt to reach a Settlement to their dispute. The effort was unsuccessful.

4. The Tribunal referred the Parties to **Section 44E** which provides unless both parties consent to exclude the public or any representative of the press where it considers it necessary or desirable to protect the privacy of parties to a Hearing.
5. The Employer verbally stated that the Company had objections to a public hearing to protect the business' goodwill. The Employee did not object.

Section 44F Notification and Publication of the Award

6. The Chairman reminded the parties of the legal requirement of **Section 44F** and that the Parties should return their completed documents to the Labour Relations Office.

EVIDENCE DISCLOSED BY THE PARTIES

7. The Employee's and the Employer's Written Submissions, Statement of Facts ("**SoF**"), the Employer's Response, the Employer's witness statements of Ms. _____, Ms. _____, and Ms. _____, as well as the Employer's written Rebuttal and Exhibits, as ordered in the Directions Hearing Consent Order formed the basis of the evidence before the Tribunal. Oral Closing Submissions by the Parties assisted in forming the basis of the Tribunal's deliberations for the Award.

The Employee's Written Position

8. The Employee was employed at _____ in November 2018. The Employee stated that since April 2023, her work environment became difficult, and she felt that constructive dismissal had occurred.
9. On March 15, 2023, the Employee informed the Employer both verbally and in writing that a Patient ("Patient A") did not like her.
10. On April 14, 2023, Patient A called the office requesting a copy of a MRI report. The Employer was present during the telephone conversation with Patient A. As soon as the conversation ended, the Employee shared with the Employer that Patient A requested a copy of his MRI report when the Employer instructed the Employee to "*do it on Monday and if he calls back don't answer*".

11. The same day on April 14, 2023, Patient A sent an email complaining about the Employee's "*bad customer service and poor communication skills*".
12. The Employer asked the Employee for a meeting to discuss Patient A's complaint but decided to do so at 4:55 pm which was just before the Employee's end of her workday. The Employee had to leave to attend to her child.
13. The Employee received a Written Warning via email on Sunday, May 4, 2023 (but signed by the Employer on May 3, 2023) which was on the weekend and of note Mother's Day.
14. The Employee explained that she objected to the Written Warning which came two (2) months after the incident following the Employer's March 15, 2023 verbal instructions to send Patient A's information on the following Monday.
15. The Employee indicated that she would only sign the receipt of the Written Warning after she sought counsel from a third party.
16. On May 14, 2023, the Employee received an email with a letter attached dated May 13, 2023, stating the Employee was suspended with pay for one week ("*Administrative Leave*"). The Employee was also ordered to drop off her office keys to the Employer.
17. On May 22, 2023, the Employer invited the Employee to a meeting to discuss the reason for the paid Suspension. On reporting to the meeting, the Employer told the Employee "*to go home*" and the Company would meet with the Employee at a later date.
18. On May 16, 2023, the Employee submitted her written resignation letter to the Company.
19. On May 19, 2023, the Employer, via email, acknowledged receipt of the Employee's resignation letter and marked it "*effective immediately*". Therefore, the Employee and the Employer were never allowed to discuss the purpose of the paid suspension leave.
20. The Employee also reported that she did not receive any 2023 pay stubs and that the last time she obtained a pay stub was in 2021. The Employee stated she required the pay stubs for a loan application. The Employee remarked that the process of obtaining the 2023 pay stubs from the Employer was stressful.

21. On January 15, 2024, the Employer did supply all post 2023 pay stubs to the Employee.
22. The Employer did pay the Employee a five (5) % cost of living increase on February 23, 2023.

Stressful events for the Employee and the Constructive dismissal claim

23. The Employee also reported that taking lunch breaks and vacations were also problematic and were only permitted when she had found a relief person which was even difficult if the Employer was simultaneously on vacation. The Employee emphasized that she was not authorized to hire anyone.
24. On May 3, 2023, the Employee also reported possible legal action between the Employer and the Employee's family member ("her Mother"). The stress of both parties involving the Employee caused a difficult working environment.
25. The Employee shared that for months leading up to her resignation, the Employee experienced shortness of breath, increased blood pressure vitals, and headaches. Her doctor also diagnosed that the Employee was experiencing anxiety attacks. The Employee was prescribed medication to control the anxiety attacks.
26. On May 31, 2023, the Employee received an email from the Employer's spouse declaring that the Employee was still employed with the Company until June 16, 2023, and the Employee could not work with anyone else until June 17, 2023.
27. The Employee received her last paycheck on June 9, 2023, and an Employment Verification Letter plus an Excel spreadsheet of her pay on August 8, 2023.
28. The Employee emphasized that the stress with the family member as a Patient of the Company and the differences with the Employer were too stressful for her continued employment.

Oral Examination of the Employee by the Employer

Patient A complaint

29. > (MP): LS do you recall the April 14, 2023 incident with a patient where you displayed unprofessional behavior?

30. LS: The Employer was aware of what transpired as she was standing next to me during the entire phone conversation. She may not have heard what the caller was saying, but she heard my response. At the end of the conversation, she told me to deal with it on the following Monday, which I did.
31. Patient A's email account in the Employer's Addendum 1(a) of events did not confirm his hostility toward me when I informed him that a consent form was needed to be signed which was standard protocol. I had found Patient A to be dismissive of me in the past and I had shared this fact with the Employer. The Employer and Patient A were friends.
32. Patient A would not abide by normal office procedures and felt office requests were beneath him.
33. He did not request the MRI report from me while in the office as I would have had him sign the consent form at that time and given him the report.
34. Patient A stated that I hung up the phone on him which is not true. Before ending the call, I verified his email address and other pertinent information that I needed to complete his request.
35. MP: did you not think your interactions with Patient A were unprofessional?
36. LS: If the Employer felt what she heard from me was a serious infraction that warranted disciplinary action, she should have expressed it at that time. I was shocked to read I was disciplined for that telephone conversation. Also, the Employer's response on page 3 of Addendum 1 stated that the Employer was sorry that LS presented a poor manner and was not polite.
37. Tribunal to Employer: did your email to Patient A signify that the Employee was guilty of inappropriate behavior towards Patient A without speaking to LS?
38. The Employer to the Tribunal: LS was disrespectful, despite Patient A generally being a difficult patient.
39. Tribunal: please explain why there was no disciplinary meeting between you and your Employer.
40. LS: The Employer was aware that when I knocked off, I was 'on the clock' to pick up my son from school. On that day, the Employer finished with patients before 5:00 p.m. and there were others in the office who could have covered the desk for

- me if a meeting was required. It was not my responsibility as the employee to organize the date and time for a disciplinary meeting that my employer requested.
41. Despite the Employer stating in the Employer's written response, I wrote in my SoF that the Employer did not state that *"If you would like to discuss this with me please feel free to set up a meeting during my working hours"*. This was never done.
 42. I attached a copy of a letter (at my Exhibit A) from a client that speaks to my character and professionalism while interacting with him as the receptionist for the Company.
 43. MP: Did you in any way breach the Company's confidentiality policy in telling the reference writer the reason for the character reference concerning the Patient A incident?
 44. LS: No I felt I needed someone to speak to my overall professional conduct.
 45. Tribunal to the Employer: do you have any proof the Employee breached confidentiality with the person who wrote the reference?
 46. MP: "No."
 47. Tribunal to the Employee: do you agree that you "acted out" your job stress with sharp remarks towards the Employer"
 48. LS: At times I would say yes, as the work was stressful, and at times when I had no lunch breaks and I was just tired.

Patient's identification data being sent to the Employee's email as part of the EMR process – breaching the Company's written Confidentiality policy

49. MP: LS why were you breaching the Company's confidentiality policy by photocopying patients' identifications by emailing to yourself and sending the patients' information back to the Company's info email address?
50. LS: Because the Employer could not remember her patient's physical appearance or what they looked like.
51. A part of the intake process was to take a picture of the patient to put on their patient file so that the Employer would be able to recognize who they were. Asking

patients to pose for a picture became a bit awkward, especially when the office was busy.

52. Patients questioned why it was necessary. One patient stated that if I could remember who he was, so why not the Employer.
53. To make the patient ID process less invasive, I started taking a copy of the patient's driver's license, instead of taking a picture. The Company's EMR (Electronic Medical Records) system did not take pdf's, so I scanned the copy of the license to my email, cropped and edited it to remove the address leaving just the picture. I then scanned it back to the Company's email address and attached the picture to the patients' files. The scans went from the Company's email to my email, then from my email back to the Company email. Once the picture was scanned back, it was deleted on my end. This was all during office hours and completely transparent.
54. Tribunal: LS did you share with the Employer why you used this method instead of the Company's EMR process?
55. LS: The Employer was too busy and just wanted to see the patients' pictures and was glad when the exercise was done. No objections were ever given to me about breaching confidentiality.

Paid Suspension Leave of Employee

56. MP: LS what was your understanding of being suspended with Pay by the Company?
57. LS: On Sunday, May 14, 2023 (***Mother's Day***) I received an email from the Company advising that I was being suspended for 5 days (referenced in the Employer's Binder Addendum #3). The email stated that I was under investigation following **Section 24** of the **Employment Act** with no details or explanations of what the **Act** stated or why I was being investigated.
58. The patients' information was used as I stated above. I thought that I was saving time and improving the intake process. I received no pushback from the Employer. My process provided the pictures the Employer wanted.

59. Tribunal: LS did you understand why the Company had concerns about breaching confidentiality as your email account could have been hacked?
60. LS: Yes but if the Employer had given me any indication that she was not happy with this process, I would have stopped immediately. I disagreed with receiving a 5-day suspension to investigate when my explanation would have resolved the issue in 5 minutes.
61. MP: In the Employer's binder there was a reference to the **PIPA Act**. What was your understanding of why the Employer thought you had breached **PIPA**?
62. LS: If you refer to my 'Exhibit B', there was proof that the Employer also sent a client's personal information to my personal WhatsApp address. To protect the client's privacy, I blacked out the personal details. If this was not an accepted practice, there was no justification for me receiving a 5-day suspension for doing pretty much the same thing.

Sending of the Employer's personal practice notes to a family member under the investigation process of Paid Suspension Leave.

63. MP: Did you send the Employer's patient notes to a family member which breached the Company's Confidentiality policy?
64. LS: There was an ongoing dispute between the Employer and a member of the Employee's family since March 2023. The family member requested copies of their medical records which was not an uncommon request. The normal protocol was followed, as the consent form was signed by the patient before providing the information. I have completed similar requests for other patients multiple times, and at no time did I need further approval from the Employer.
65. I was completely transparent with all such requests. The Employer never discussed the release of written patient notes with me and what she "discovered" would have been found in the patient file - the same as any other patient request I was very uncomfortable with being in between the family and Employer dispute. The job's atmosphere deteriorated.
66. Tribunal: Why did that event make you uneasy?

67. LS: It was not unusual for the Employer to question me about my family member's well-being. At one point after a phone discussion between the family member and the Employer, the Employer said to me **"Your ----- is going to sue me"**.
68. So I had to listen to the family's side after work. I made it clear to both parties that I would not be pulled into the matter. I refused to be a witness in any Company meetings or conversations between the two of them.
69. Tribunal: LS did you at any time ask the Employer to completely remove you from any interactions with your family member due to confidentiality and a conflict of interest?
70. LS: No, and the Employer never suggested anything differently.
71. Tribunal: LS are you aware of any complaints from your family members about your role as the Company's receptionist?
72. LS: No.
73. Tribunal to Employer: Does the Company have an Employment Handbook and a written policy on releasing patient information/notes?
74. The Employer: Yes, there was a Company Employment Handbook that was still being updated. However, it should have been clear to the Employee that at no time should the Employer's personal practice notes be copied without the Employer's written consent. The Employer could be sued if a patient or someone misinterprets the notes.
75. Tribunal to Employer: AP is there proof that the Medical records containing your handwritten notes were sent?
76. The Employer: There was a hard copy (entered into evidence) of May 4, 2023, of a Company consent form specifically requesting the office notes and a copy of the radiology.
77. Tribunal asked for copies of the Consent form, the signed Confidentiality form by LS and the current written Employment Handbook. The Employer was told they would have an opportunity to share more details during the Hearing.
78. LS: I was due to return to work on Monday, May 15, 2023, and received an email advising me of my suspension the day before. Three days later, I handed in my letter of resignation.

LS Paragraph 7 oral response to

Accusation of

LS accusation of breaching Confidentiality

79. Tribunal: As MP entered a witness statement into evidence for the Employer on another breach of confidentiality incident by the Employee, the Tribunal asked specific questions to MP and LS for transparency.
80. Tribunal to LS: What was the role and relationship of [redacted] with you?
81. LS [redacted] is a local company that provides HR services. The issue surrounded my name which is Lari LaNika Simmons. While Lari has been used during my working and professional career, I am known as LaNka, more so Nika by my family and friends. I went to school with the receptionist at [redacted] and she knows me as LaNika. I did seek professional advice regarding resignation. My suspension was the last straw! There was no formal introduction needed when I called [redacted], and I do not know how I was introduced to MP or what was said before the telephone call was transferred.
82. I do not recall MP introducing herself or having any idea who I was talking to. I explained my reason for calling, I needed advice on resigning. The lady said that she could help me. We had a conversation about my resignation. I thanked her for her advice, and we ended the call.
83. To imply that I would need to use an alias name to seek advice was ridiculous. It made no logical sense that I would search the Employer's email and personal records to find out what HR service was hired, especially MP.
84. Tribunal: So was the **PIPA Act** being breached by you as noted in the Employer's Addendum #14?
85. LS: My private conversation with [redacted] should have not been shared. I called for advice on Tuesday, May 16, two days after receiving notice of my paid suspension and not in August 2022 as implied by [redacted].
86. I was **on medical leave** from Tuesday to Friday, May 9 to 12, 2023. The suspension occurred from Monday, May 15 to May 19, 2023.

87. MP stated that she was advised of a new client, the Employer on May 15th. I had no opportunity to research this information in the office before my call to [REDACTED] on May 16, 2023, as I was on suspension. From Addendum #14 of the Employer's bundle, the Company hired [REDACTED] on May 15, 2023.
88. I was within my rights to seek employment after my contract with the Company terminated on May 19, 2023.
89. Tribunal: The Company accepted your resignation letter. They did not terminate your employment. Are you referring to the charge of constructive dismissal?
90. Tribunal to the Employer: Was the period from May 16 to June 16, 2023, the pay in lieu of notice, as stipulated by the Act?
91. The Employer: Yes, and to also ensure the Employee was not taking any confidential information to her new employer.
92. Tribunal to LS: Were you employed by competitor of the Company [REDACTED] ?
93. LS: No I was in training and not officially full-time, I had not breached any confidentiality by sharing any of the Company's records.
94. Tribunal to MP: can you explain the events of LS's call to you?
95. MP: As a norm when calls were transferred to me, I replied, Hi this is [REDACTED]. I noted a name and the reason for the call which was the person in the process of resigning from their job.
96. I provided the advice and hung up. It was only when I reflected on the call and the similarities of the Employer's disciplinary events with LS, that I thought there may have been a breach of confidentiality by LS.
97. Tribunal: The Employee testified she was not aware that [REDACTED] was a client of the Employer and the timing of the LS call was a mere coincidence.
98. Tribunal to MP: You have no evidence that LS knew that the Employer was Performance's client.
99. MP: No.

LS Oral testimony on seeking alternative employment.

100. MP: did you seek a new job while still employed with the Company?
101. LS: When I received the email from _____ dated May 31, 2023, I sought further confirmation from the Government Labor Office that I had the right to seek further employment. It should be noted that while the email stated my contract with the Company ended on June 17, 2023, it further stated that my benefits ceased on May 31, 2023.
102. Tribunal to Employer: Did the Employee's insurance benefits continue for one month per the Health Insurance Act.
103. MP: At the Employer's Bundle - Addendum 13, the health insurance was paid to the end of May 31, 2023.
104. The Employer: the Company was aware that the Employee was starting employment with a competing Company at the end of May 2023.
105. Tribunal: How did the Company discover which Company LS was now being employed?
106. The Employer: Bermuda is a small place.
107. Tribunal: The health insurance premium was always paid one month in arrears. So the last date of health insurance coverage as a deductible should have been June 30, 2023, just in case the Employee required any medical service.
108. Tribunal to LS: When did you start your employment with the new Employer?
109. LS: I started training with my new employer on May 29, 2023. Verification of my employment dates with my new Company was attached as my 'Exhibit C'. I was well within my rights to be employed elsewhere, I was not employed on May 23, 2023.

The Employee testimony on not receiving Pay Stubs as stipulated by law.

110. MP: LS what was the purpose of claiming you received no pay stubs when you just needed to ask?
111. LS: Admittedly I was not diligent about obtaining and keeping records of my pay information. It should be noted that the pages submitted as Addendum #5 were all spreadsheets, not paystubs. If the Company was unable to provide paystubs as requested by law, this verified that the Company was at fault.

112. My response to Paragraph 8 response of the Employer's response was to highlight the withholding of my final pay related to my resignation being accepted effective May 19, 2023, and receiving my final payment three weeks later on June 9, 2023

Questions of LS being over-taxed as the Company's Administrative Office Medical Practice Receptionist

113. MP: As the Office Administrator and MP Receptionist as noted in your job description, you were required to find coverage for your lunch periods, vacations, or when you were on sick leave. Is this correct?

114. LS: I did not think my job description stated I had to find someone to cover for my lunch breaks, vacations, or when I was sick. It was not fair for the Employer to order me to ask patients or anyone else if they knew of someone to cover for me. It's not my business.

115. MP: Do you recall the reason _____, was hired?

116. LS: Yes, because there was a meeting about me being overworked and they hired someone after I complained.

117. Tribunal to the Employer: If the Company was concerned about confidentiality, why would the Employee be required to hire anyone to allow her to have a lunch break, vacations, or while she was on sick leave?

118. The Employer: Naturally the Company would have to satisfy itself if the replacement person was suitable. Ms. _____ was referred to the Company. She met the criteria as a part-time relief and is now a full-time Employee. Also, there was a medical temp company that the Employee should have contacted.

119. Tribunal to the Employer: Why was the Employee expected to hire the medical temp company? Why was it not done by the Company?

120. The Employer: The Company hired Ms. _____ on a part-time basis as she worked for a Government Department and had the flexibility to fill in if she had sufficient notice. I cannot remember how I learned of the medical temp Company.

121. Tribunal: The Tribunal can ask your witness Ms. _____ when she is called as the Company's witness.

LS seeking a character reference letter from the Company's physiotherapist

122. MP: LS, what was the purpose of seeking a character reference letter from your coworker Ms. _____.
123. LS: I was working part-time at KEMH and applying for another position in the Hospital. Along with updating my resume, I sought professional references. _____ was happy to oblige me and suggested that I also get a reference from the Employer as she was sure the Employer would be more than happy to provide one.
124. Tribunal: LS did you ask for a reference from the Employer?
125. LS: No, because it had nothing to do with me secretly plotting to leave the Company. I did not expect _____ to report our conversation to the Employer as submitted in the Employer's Bundle in Addendum #8. It was grossly inappropriate for _____ to do so and showed how little regard _____ had for my privacy.
126. Tribunal: Ms. _____ was a Company witness so you can put that question to her.
127. The Employer: The Company did not believe the Employee was constructively dismissed because the Employee was actively seeking a new job and was hired less than two weeks after she handed in her resignation letter of May 16, 2023.
128. Tribunal: The Employee was within the law on the principles of constructive dismissal, to seek a new job to mitigate any future losses that she could incur whilst she was unemployed.
129. Tribunal to LS: What was your proof of constructive dismissal by the Company as noted in the Employer's Addendum #5?
130. LS: It was unfortunate that my employment with the Company ended this way. After four and a half (4.5) years of dedicated service, I felt my future with the Company was in danger.
131. The Tribunal: However, in February 2023, the Company increased your wages for being a valuable employee.
132. LS: The incident between the Employer and my family member occurred in March 2023, and caused a noticeable deterioration in the office environment. The

Employer's attitude toward me followed resulting in me obtaining a formal Written Warning on May 4, 2023. I was then told my performance and behavior would be monitored over a six-month (6) period.

133. Also, the Written Warning was based on a patient's complaint dated April 14, 2023, that was never formally discussed with me. The letter of warning was an afterthought.
134. The office environment was tense and unpleasant. I was given time off by my doctor due to work-related stress and on a Sunday, the day before I was due to return to work, I received notice by email of a five (5) day suspension with no explanation of what I was being suspended for.
135. After having five days off (including Saturday) to regroup, let things settle, and prepare myself mentally to return to work, receiving that May 4, 2023 email sent my stress and anxiety levels right back to where they were when I went to see my doctor.
136. Both Employer matters were handled unfairly. The Employer was grasping at straws when seeking a reason to suspend me! The Employer sent the client's personal information to my WhatsApp but suspended me for sending client information to my email.
137. My job title was Medical Practice Receptionist. Whilst the workload was far beyond the duties of a receptionist as attached at Exhibit D, my job description did not have duties to find staff. The workday was busy and intense. The added tension in the office was hampering my efforts to perform to the best of my ability.
138. I was a single parent of two school-aged children with full responsibility for my household. I gave the Company what they appeared to be seeking; that was my resignation.
139. Tribunal: LS did you ever share with the Employer how you were felling about the job environment becoming toxic? The Tribunal recognized that as a matter of right, you did not have to disclose the nature of nature of your medical leave to your Employer.
140. LS: no

Tribunal Analysis and Discussion LS's oral Testimony

The Company's Patient Consent Form medical records and office notes

141. It was clear to the Tribunal that LS was a "jack of all trades" for this small Company and was very unhappy with her workload and needed more help even in hiring i s a part-time relief.
142. The Tribunal was also very concerned that the Company's consent form policy in releasing patients' medical records was not clear regarding who had to sign off on releasing medical information/notes. The onus was on the Employer to protect against malpractice and lawsuits, especially on the release of the Employer's personal practice notes.

143.

LS's Health Insurance

144. Health insurance monthly premiums were always paid in arrears. Hence, if, the Employee's health insurance coverage ended in June 2023 then the standard Hospital Insurance Plan ("HIP") would remain active until the end of July 2023. There was no evidence that the Employee suffered any harm in not having health insurance coverage.
145. Every employee who claimed constructive unfair dismissal was required by law to find alternative employment to mitigate their loss of any future earnings. So the Employer was incorrect to state the Employee was wrong in submitting a charge of constructive dismissal because she started to look for a new job. The Employee applied for her new job before the April and May 2023 disciplinary incidents. The Witness Statement of on page 32 of the Employer's Addendum 8 referred to the Employee's 2022 thoughts of seeking new employment which spoke only of the Employee's intentions.

Pay stubs

146. Every employee was entitled under **Section 7 Itemized Pay Statement of the Act** at or before payment of wages. The Employer breached the **Act**. Confirmation of no pay stubs was evidenced in the Employer's Addendum #4 on page 1 and

Addendum #6 on page 17 of the Employer's bundle noting that the Employer shifted the responsibility on the Employee for not asking for pay stubs after May 10, 2021.

The Employer's Written Position of LS's Constructive Dismissal Claim

147. On May 4, 2023 (but signed by the Employer on May 3, 2023), a formal Written Warning on behalf of the Company was sent via email to the Employee. The Employer stated the Parties were not able to meet before the issuance of the Formal Written Warning letter.
148. The Employer emphasized that the purpose of the Written Warning letter was to bring to the Employee's attention, the ongoing deficiencies in the Employee's conduct and the seriousness of the events requiring the Employee's immediate corrective action as the Company's Medical Practice Receptionist.
149. The Employer highlighted that the Company relied on all of its employees to perform their duties and responsibilities to the best of their abilities and at a satisfactory level to make the working environment a positive and productive one.
150. The Employer averred that the Employee was a member of the Company's team, and because she did not meet the Company's expectations, her nonperformance harmed the Company, and the Employee's co-workers and caused damage to the Company's patients' needs.
151. On April 3, 2023, the Employer and a Company worker requested the Employee to communicate better to improve the process of copayment arrangements with patients. The Employer explained to the Employee that their response to the requests was abrupt and that the Employee had refused to fulfil the Employer's request. The Employee offered no productive suggestions or resolutions to the Company's documented concerns.
152. On April 10, 2023, the Employer asked the Employee to clarify if a patient's insurance claim was covered at [REDACTED]. The Employee was unable to provide a viable answer and dismissed the Employer's inquiry. This interaction took place in front of a patient.

153. Despite the Employer's request for the Employee to provide a reason for their dismissive tone at the event above, the Employer felt the Employee's response was rude when the Employee stated that she had been doing this job for a long enough and that the Employer should not be questioned in front of a patient.
154. On April 14, 2023, the Employer received a letter of complaint from the long-standing Patient A who detailed the Employee's poor customer service:
- (a) The Employee not providing detailed instructions to Patient A related to the Company's Release of Information Form.
 - (b) The Employee not providing the Release of Information Form to Patient A who requested the MRI report.
 - (c) The Employee ended the telephone conversation abruptly, without ensuring Patient A was clear on the next steps.
155. The Employee was provided with a copy of Patient A's letter of complaint where the Employee was advised that the Company requested an urgent meeting on Monday, April 17, 2023.
156. It is alleged that on Monday, April 17, 2023, the Employee failed to prioritize the importance of meeting to discuss Patient A's complaint of April 14, 2023. The Employer noted the Employee's behavior of raising her voice and expressing that she had to pick up their son and refused to discuss this urgent matter. The Employee left the office after they displayed disrespectful behaviour in front of patients and co-workers without offering an alternative suggestion.
157. The Employer requested that the Employee provide:
- (i) Courteous and thorough customer service to patients, physicians, insurance companies, and co-workers.
 - (ii) Provide professional, courteous, and efficient management of the reception desk.
 - (iii) Implement processes for Company improvements as requested and promptly.
 - (iv) The Employer would identify and provide the Employee with paid professional development training courses on improving the quality of her customer service and improving her communication skills, geared to remediating the Employee's documented behaviours as specifically defined in the written warning.

158. Once the Employee had signed receipt of the Written Warning, the letter would be placed on the Employee's personnel file noting the purpose of the Disciplinary Action that was effective for six (6) months through November 4, 2023.
159. The Employer stated that if there was no notable improvement in the Employee's performance and conduct within the six months, the Company reserved the right to impose further disciplinary action up to and including dismissal, depending on the seriousness of the offense without notice or the payment of any severance.
160. The Employee was encouraged to request assistance with any concerns, as the Company considered the Employee a valuable team member.

The Employer's Written Position of the Employee's Paid Suspension Leave

161. On the matter of the Employee's Paid Suspension Leave Notice, the Employer wrote that a patient's information, in particular the Employer's personal practice notes, had been released to the patient which necessitated an investigation under **Section 24** Disciplinary action of the Employment Act.
162. The focus of the investigation was to ascertain if there have been any violations of the Employer's internal policies and practices and the PIPA guidelines governing patient confidentiality or violations of the **2000 Act**.
163. The Employer wrote to the Employee that ***the investigation did not focus on accusing the Employee of any wrongdoing or guilt.*** The Employee would be allowed to discuss the circumstances after the investigation.
164. The Employee was instructed that until that investigation process was complete, the Employee was not to contact any patients and staff unless the Employer requested specific information about the investigation. ***The Employee's pay and benefits would remain whole during this paid suspension period.***
165. The Employer reported the investigation would be conducted over five (5) business days, from May 15 until May 19, 2023.
166. The Employee was ordered to attend a Disciplinary meeting on Monday, May 22, 2023, where the investigation findings would be discussed and

the Employee would be provided with an opportunity to respond. The meeting above did not occur due to the resignation of the Employee.

Employer's Witnesses Testimonies

167. **Testimony of Witness [redacted] via WebEx**
168. The Tribunal consented to Ms. [redacted] providing evidence via WebEx due to an urgent personal matter on March 25, 2024. The Witness's statement was found on page 33 of the Employer's Addendum #9.
169. MP: Having duly been sworn in the Witness was asked about her position at the Company.
170. SC: I was hired as the Company's physiotherapist and worked with LS.
171. MP: Was LS denied her lunch breaks and breaks?
172. SC: LS was responsible for finding coverage for her lunch breaks and vacations even through temp agencies. The witness thought there was nothing wrong with LS finding coverage as SC did at a previous employer.
173. At times, I have purchased lunch for LS as she could not have a lunch break.
174. MP: Did you observe LS being disrespectful to patients or staff?
175. SC: After August 2022, yes there was unprofessional behaviour towards the Employer. To settle the rift, SC mediated the rift of issues presented by LS. The meeting was minuted. Online courses were offered to LS to improve her communication skills and administrative management of the Employer's business. LS never took up the offer of assistance.
176. LS to SC: You said that I had chosen not to actively find coverage for my lunch breaks when both you and the Employer were busy?
177. SC: No, that was why [redacted] was hired to cover your lunch breaks, vacations, and sick leave as long as [redacted] had advance notice for her services.

**Witness [redacted]' testimony at the Employer's binder
Addendum #9**

178. After being duly sworn in, Ms. _____ confirmed that her current position was the full-time MP administrator as of May 2023. Ms. _____ acted as a part-time relief from January 2021 where she covered LS's lunch breaks, vacations, and sick leave.
179. MP to MB: Can you explain your job duties?
180. MB: I was responsible for scheduling lunch breaks, and planned and unplanned time off for herself and the staff. I formalized a relationship with a medical temp company as well as two on-call receptionists to cover sick leave and vacations. I had never been denied a lunch break or vacation.
181. Tribunal to MB: You presented that you took all your lunch breaks and your vacations because the Company hired two (2) on-call receptionists and a medical temp company provided staff upon request.
182. MB: Yes, there was more coverage by part-timers and the medical temp agency. The Company's administration of the front desk was much better and more efficient.
183. Tribunal: Did you suggest any of these efficiency improvements while LS was still hired as the MP receptionist?
184. MB: The Employer had regular staff meetings where all staff were encouraged to make suggestions to improve the Company's efficiency.
185. MP: Did you have other duties besides the MP reception desk?
186. MB: Yes, I took over the billing.
187. MP: Did you ever observe LS being disrespectful to the Employer?
188. MB: Yes, on a few occasions LS was disrespectful and rude to the Employer.
189. MP: Did you have any issues with the Electronic Medical Records (EMR) and taking of patients' photos?
190. MB: I was assigned the compatibility of the camera and the EMR software issue. Everything worked and there was no need for any additional steps.
191. MP: Can you describe the work environment of the Company?
192. MB: The Company has a healthy and positive work environment and all the staff worked to benefit the Company's success.

The Employer's testimony

The Employer's formal Written Warning to the Employee

193. The Tribunal cautioned MP that much of the evidence that was submitted by the Employer and the Company's witnesses was covered through examination and cross-examination. The Tribunal was only interested in the events from April to May 2023.
194. MP to the Employer: Can you explain what promoted the formal Written Warning to LS:
195. The Employer: Yes, despite my request to LS to find time to meet with me to discuss the events of Patient A, there was always an excuse or disrespectful behaviour towards me.
196. Tribunal to Employer: Why did you not state a time and date to arrange a meeting with LS rather than leave it up to LS?
197. The Employer: The nature of the Company's business could change at any anytime. So as LS knew when there were quiet moments with the daily appointments, LS could have approached me.
198. Tribunal to the Employer: As the Employer was it not your responsibility to schedule the disciplinary hearing before sending a formal written warning without LS being questioned about the documented incidents?
199. The Employer: The office was small such that LS could have come to me just as she did for any other issue she had.

The Employer's Oral Testimony on the Paid Suspension Leave.

200. MP: Can you explain why the Employee was suspended with pay on May 13, 2023?
201. The Employer: The Company discovered that on May 4, 2023, the Employee had sent a copy of the Patient's (WSB's) medical radiology report and office notes records to the Patient. The Patient was a family member of the Employee and the Company was at odds with the Patient WSB. The Employer's personal practice notes were never released

without the Employer seeing the consent form for any office file notes. The Employer stated the Company had to protect itself from a malpractice lawsuit, especially if any layperson tried to read and understand her handwritten practice notes.

202. The Tribunal requested and received a written policy of the Company's consent form policy and office notes. The policy was not on the Company's letterhead which did not lend support for the written word authenticity. However, the Tribunal was left with no alternative but to note the Company's form's content and reserve its judgment.
203. MP: Did the Company investigate other breaches of confidentiality by the Employee?
204. The Employer: The EMR process were LS used her email address to process photo IDs and then sent emails back to the Company's info email address to be filed.
205. Tribunal to the Employer: The Tribunal was satisfied with the evidence and the statements from LS and MB on the EMR process.
206. The Tribunal asked the Employer if the Employee was offered counselling through the Employee Assistance Programme to deal with any job-related matters that caused LS stress.
207. The Employer: No, as the Company could only offer such advice only when the Employee requested help.
208. Tribunal to the Employer: please explain why the Company would send the Employee a Suspension Paid leave notice on a non-work day – Sunday, May 4, 2023. Which was Mother's Day?
209. The Employer: the sending of the doctor's hand written patient notes was an urgent matter that could lead to a malpractice law suit especially with that patient.

Deliberation by The Tribunal analysis and discussion on LS's Administrative Paid leave

210. The doctrine of Management Rights was that Management had the right to hire, fire, and discipline; the right to direct what work was done, who did the work, and when the work was done; the right to establish policies and procedures necessary for the efficient and safe operation of the business.
211. The purpose of paid Suspension Leave (aka Administrative Leave (“Admin Leave”)) occurred when LS was relieved of her normal job duties and asked to stay home during her normal work hours while receiving her May 5 to 9, 2023 pay and benefits.
212. The normal practice during the Admin Leave period, the Employee’s job duties were subjected to an internal investigation for alleged wrongdoing of the Company’s policies and procedures (such as a breach of confidentiality) to protect the Company’s staff and Company’s resources. The Employer stated that the Company Employment Handbook was being revised.
213. Administrative leave does not have a set duration of time for the Company to complete the investigation which depends on the complexity of the investigation and its outcomes.
214. LS’s employee rights and obligations as outlined in the Company’s May 4, 2023 Suspension Paid letter were not breached while the Company’s investigation progressed. Hence, the Suspension with Paid leave cannot constitute a ground for constructive dismissal.
215. The Employer was wrong to send a paid Suspension notice to the Employee on a non-work day. That event should have been addressed first thing on the Monday May 5, 2023 (first business day of the week) before LS started work.

The April 15, 2023, Formal Written Disciplinary Warning Letter

216. When LS’s conduct or performance became an issue, the Employer was correct to take steps to address the problem and prevent it from

reoccurring. However, if the Employer did not immediately address the Patient A incident, then additional problems arose.

217. The Tribunal was not pleased that the Employer's Managerial missed discipline-related pitfalls exasperated the Employer-Employee interactions.

Inconsistent Company's policies and procedures on discipline, Patient care and duties not contained in the job description.

218. A face-to-face disciplinary meeting was required before a formal Written Warning letter was issued to LS.

219. The Tribunal was mindful that the Employer elected to take a flexible mindset on scheduling a date and time to have a disciplinary hearing with LS concerning Patient A's complaint when the Company's business was slow.

220. All the Company's staff recognised that Patient A was a difficult patient. Therefore, the Employer should have been decisive in telling LS to send the MRI to Patient A before the close of the business day.

221. Patient A's email concerning LS customer service required a prompt response after a thorough, and impartial investigation into the incident was conducted the following day. The proverb, "***the Customer is always right***", did not mean the Employer had to immediately write to Patient A degrading LS. A simple apology statement to Patient A would have sufficed to recognize Patient A's concern and that the Company would investigate the matter.

222. LS also had not taken responsibility for failing to write to the Employer concerning the lag time it took to discuss Patient A's complaint. Hence, neither the Employer nor the Employee acted in good faith to address Patient A's complaint. Instead, both the Employer and the Employee engaged in a heated exchange over the mannerisms of Patient A instead of sending the MRI report as requested.

223. It was also inappropriate for both the Employer and the Employee to display unprofessional behaviour in front of any patients and the staff or for the Employer to discipline LS in front of co-workers. The point of a disciplinary meeting was to correct LS's behaviour, not to embarrass LS.

LS's Family Member and the Company

224. The Tribunal noted LS's rude outburst towards her Employer and was equally amazed at the Employer's insensitive manner toward the Employee's family member.
225. If the Employee's Mother threatened to sue the Company, the Employee had to inform the Employer that she wanted to recuse herself from any day-to-day dealing with LS's family member and having sight of the patient's file. The Employer also had the responsibility to be mindful of the sensitivity of saying anything related to the Employee's mother during the work day, especially on the matter of a possible malpractice lawsuit from LS's family member.
226. There was no tangible evidence presented to the Tribunal that LS sent the family member the Employer's handwritten personal file notes that prompted the Employer to suspend the Employee with pay pending the outcome of the May 15, 2023 investigation. Hence, there was no harm to LS as the Employer had not issued any disciplinary action before the conclusion of the May 15, 2023 investigation. Also LS had resigned her employment with the Company.
227. In summary, the implied expression of '**mutual trust and confidence**' was eroded. The Employee felt humiliated by the Employer discussing her Family member, the Employer felt intimidated by the Employee's family member, and the investigation into any breach of confidentiality by the Company against LS over the family member receiving the Employer's personal file notes was never proven.

On the Matter of photocopying and emailing Patients' Identification

228. It was clear that LS carried out the Employer's directive of producing picture Identification of patients albeit not using the EMR process. It was not clear how long LS's method of emailing the patients' information containing patients' IDs, and then sending just the photographs to the Company's info email address for Company use occurred. The Employer produced no evidence that the Company's Patients' data was hacked or misused by LS. There was also no corroborating evidence presented by witness _____ as a part-time staffer that she tried to assist LS in understanding the EMR process. Equally, there was no evidence presented by LS to the Tribunal that she informed the Company that she was experiencing any issues with operating the EMR software.

Patient care and duties that LS stated were not contained in the October 2020 Statement of Employment/job description.

229. The Employee's October 9, 2020 Statement of Employment ("SoE") designated LS as the Office Administrator and Medical Practice Receptionist. The 2020 Job duties contained a bullet point "**Other Administrative work as required**" which is a catch-all clause that employers use to add additional duties.

230. The Employer also included in the SoE in the 5th paragraph:

From time to time who you report to, your job title and the duties set out in your job description may be reasonably amended by the Company and you may be required to undertake additional and/or different duties as necessary to meet the business needs of the company.

231. However, if the Company added:

(a) The photocopying and the compiling of patient identification information to be stored as EMR data by LS to her existing 2020 Job description,

(b) the job task of finding replacement staff before LS went on vacation, was out sick, and any other office contingencies that required the hiring of staff,

232. The Company was required to issue a **Variation of LS's existing 2020 Statement of Employment letter** for those additional new job duties noted in the paragraph above.
233. The Tribunal did note that LS offered no evidence that she refused to carry out the new job duties defined in line 239, hence the duties were incorporated into her daily job functions. However, the Company's oversight of not issuing a varied SoE breached LS's employment rights.

The Law on Constructive Dismissal

234. **Section 29 of the Act Constructive Dismissal** states (1) *An employee is entitled to terminate his contract for employment without notice where the employer's conduct had made it unreasonable to expect the employee to continue the employment relationship having regard to the employee's duties, length of service and circumstances.*
- (2) *An employee who terminates his contract pursuant to subsection (1) shall be deemed unfairly dismissed for the purposes of this Act.*
235. **Section 38 of the Act Hearing of Complaints by Tribunal, subsection (3):** *Where the employee claims constructive dismissal it shall be for him to prove the reason which made continuation of the employment relationship unreasonable.*

Case law

236. The legal provisions of constructive dismissal were decided in the UK case of **Western Excavating (ECC) Ltd v Sharp [1978]** and referred in the dictum of the Bermuda Court of Appeal case of **Interpetrol Bermuda Ltd.**, where Mr. Justice da Costa referred to "an authoritative work that set out four conditions which must be met for the Employee to claim constructive dismissal:
- (a) There must be a breach of contract by the employer. This may be either an actual breach or an anticipatory breach.

(b) That breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents that justify his leaving.

(c) He must leave in response to the breach and not for some other unconnected reason; and

(d) he must not delay too long in terminating the contract in response to the employer's breach, otherwise, he may be deemed to have waived the breach and agreed to vary the contract "

237. Regarding the conduct of management, in the Canadian persuasive constructive dismissal case **Shah v. Xerox 1**, and noting the dictum of the trial judge:

*Where the conduct of management personnel is calculated to cause an employee to withdraw from the employment, it may, in my judgment, amount to constructive dismissal. The test, I believe, is **objective**: it is whether the conduct of the manager was such that a reasonable person in the circumstances should not be expected to persevere in the employment. As the particular circumstances are crucial, each case must be decided on its own facts. The test should not be lightly applied. An employer is entitled to be critical of the unsatisfactory work of its employees and, in general, to take such measures – disciplinary or otherwise – as it believes to be appropriate to remedy the situation. There is, however, a limit. If the employer's conduct in the particular circumstances passes so far beyond the bounds of reasonableness that the employee reasonably finds continued employment to be intolerable, there will, in my view, be constructive dismissal whether or not the employee purports to resign.*

238. In applying the **Shak** criteria to this matter, the Tribunal was not convinced that the March 2023 Patient A event was a serious breach as both Parties

- stated for the record that Patient A was a known difficult Patient. Both Parties acted inappropriately in handling Patient A's consent form request.
239. Failure to provide the Employee with paystubs was not analogous to the Employer not paying wages. Arguably the Employer breached **Section 7 of the A Itemized pay statement of the Act**, for each pay period up until the Employee asked for the same as defined in the Employer's evidence bundle.
240. However, the Employee also had the responsibility to ask at any time, especially after she received each of her monthly wages, for that specific monthly pay stub. In other words, LS's silence gave consent to the Company's non-compliance with the **Act**.
241. There were changes in the Employee's October 2020 job duties, content and contractual terms imposed by the Employer on an Employee with her consent. The Employer was required to issue a variation letter to LS's existing SoE to reflect all significant new job duties. What the Tribunal took exception to was the Employer insisting that the Employee find persons to cover the reception area for her lunch breaks, for her vacations, and other odd days when the Employee wanted a day off. But once Ms. [redacted] was hired as a part-time relief for LS, those complaints were addressed by the Employer.
242. The Employee was correct in citing that such duties of hiring relief part-time staff was not written in **her job description**. There was no conclusive evidence that LS did not actively seek relief staff for her vacation leave.

LS's mother as a Patient

243. On the issue of the family member's medical report and the Employer's private handwritten notes that LS included as a ground for constructive dismissal, the Tribunal discussed that LS should not have involved herself or had any knowledge and dealings with her family member's (mother's) medical file. In other words, the equity dictum of "**clean hands**" cannot apply to LS. It would be difficult for LS to be objective in any discussions

with the Employer. Likewise, the Employer should have recognized the sensitivity of involving LS in medical matters of her mother, as **PIPA** rules applied to LS's mother like all other patients. So there was an equal lapse in responsibility by LS and the Employer.

The Employee taking pictures of patients without the use of the EMR process

244. Generally, a healthy job environment meant that both the Employer and the Employee were conscious of the physical and mental health of all staff members and for the Employer to avoid the potential serious breach of the **Act**. The Tribunal was sympathetic to the Employee's and the Employer's frustration when the lines of communication were not kept open between them from the critical period of March 2023 to May 2023.
245. The Tribunal noted that the Employer had offered the Employee an opportunity to receive training on any facet of her job duties that the Employee thought was stressful. Witness _____ shared that she would at times purchase lunch for the Employee. There was a total breakdown in mutual trust and confidence which prevented the lines of communication to remain open.
246. However, what did occur was the Employer's complaint requesting the Employee to physically attend and discuss Patient A's incident. The meeting did not occur. Not conducting a meeting ultimately resulted in the Employer issuing a written Warning to the Employee which the Employee took offense to.
247. The Tribunal saw no evidence of the Company's written Grievance Procedure which is a useful tool for resolving difficulties at an early stage and preventing any unnecessary or premature resignations that can be damaging to the Employer and (particularly) to the Employee's emotional state.
248. The Tribunal also noted that the Employee was not issued with a revised (varied) Statement of Employment that conformed to **Section 6 of the Act**.

The Tribunal saw no evidence of a written statement against Bullying and Sexual Harassment in the workplace and how the policy could be accessed. The Employee indicated she felt bullied into finding an alternative method to store picture ids instead of using the EMR method and to hire relief staff to carry out the MP reception work.

249. The Tribunal noted that the Company was in the process of revising the Company Policy and Procedure Manual and that specific requested copies of Company **policies had no Company Trade Mark or logo.**

Ruling

250. The Tribunal ruled that in applying the elements of Constructive Dismissal to this case:

(a) Firstly, was there a grievance lodged by the Employee? No, the Employer relied on the April 14, 2023, Written Formal Warning issued to LS based on LS's performance shortcomings.

(b) Secondly, was the Employer's behaviour so '**unreasonable**' to be sufficient to meet the threshold or to allow an employee to resign and claim constructive dismissal? The Employer's behaviour was not overly serious that it amounted to a fundamental breach of the LS's contract of employment, rendering it untenable for LS to continue working for the Company.

(c) Thirdly, was there a fundamental breach of the **implied terms of mutual trust and confidence** to destroy the employment relationship? The test for the Tribunal was objective in determining if the Employer's conduct constituted a fundamental breach of LS's contract of employment, where the range of reasonable responses test would not be relevant. The Tribunal recognized that the employment relation was severed but only because both Parties had equally contributed to the events from April to May 2023.

- (d) **Fourthly**, was the Employer's breach limited to a one-off or single action, omission, or incident to constitute a fundamental breach as the basis of LS's constructive dismissal? In other words, did the Employer repeatedly breach LS's contractual term(s) in minor ways, but was the effect of all of the breaches taken together constituted a sufficiently serious breach? The Tribunal recognized that when LS involved herself in sending the medical record information to her Mother, she effectively carried out the instruction of the Patient. LS could not then use that incident to justify constructive dismissal. Equally, the Company presented no evidence that LS sent any personal medical file notes.
- (e) LS expressed that the Suspension Leave with pay was the '**last straw**'. The Tribunal expressed that paid Administrative leave (paid Suspension Leave) meant the Employee lost no pay or benefits and constituted no ground for constructive dismissal. That the Paid Suspension could not be considered bullying the Employee.
- (f) **Lastly**, did LS indicate in her resignation letter of May 17, 2023, that her resignation was a constructive dismissal because of the Employer's April 15, 2023, Written Warning Disciplinary Letter, whether the May 14, 2023 Paid Suspension leave was a major breach of LS contract or any of the changes in LS's job duties? No. The Tribunal felt those job duty matters were historic which meant LS had accepted the job responsibilities albeit under less than favourable working conditions.
- (g) The Tribunal imposed civil penalties to the Company:
- (1) \$500.00 BM dollars for no regular itemized pay stubs (specific to the evidence date period) to the Employee per the **Act**,

- (2) \$500.00 BM dollars for the Employer not issuing the Employee with a Statement of Employment Variation letter to reflect all of LS's new duties that were not contained in LS's October 2020 statement of employment.
- (3) \$500 for not seeing proof of a Written Grievance Procedure in the Company Staff Handbook.
- (4) \$500 for not having a written policy statement on Bullying and Sexual Harassment.

- (h) Constructive Dismissal was not proven by LS as she did not mitigate her demise.
- (i) The Employer was not managing the Company as efficiently as she should have.

- 251. **Section 44M of the Act** mandates that the Employer to pay a civil penalty to the Account General of \$2,000.00 BM dollars.
- 252. That pursuant to **section 44E**, no report on or comment in respect of this matter maybe made by either party that is not a fair and accurate report or summary of the arbitration proceedings.
- 253. If either party makes any report on or comment in respect of this matter contrary to **section 44E**, such party shall be liable to a civil penalty.
- 254. That both Parties have the right to apply to conceal any matter of the Hearing/Award as outlined in **section 44F (3) Notification and Publication of Award of the Act**.
- 255. Pursuant to **section 44O of the Act**, the Respondent may appeal on a point of law.

The Award

- 256. The case for constructive dismissal filed by the Claimant has been dismissed.

The 24th Day of April 2024



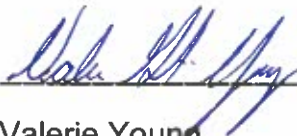
Edward G Ball Jr JP, LLB-PCMI

Chairman



Derrick Burgess JP

Deputy Chairman



Valerie Young

Tribunal Member

