

IN THE MATTER OF A DISPUTE UNDER THE TRADE UNION & LABOUR  
RELATIONS (CONSOLIDATION) ACT 2021  
BEFORE THE EMPLOYMENT & LABOUR RELATIONS TRIBUNAL

XXXXX

**Claimant**

**-and-**

XXXXX

**Respondent**

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**DECISION**

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Hearing Date: 12 August 2024

Members of the Tribunal: Ms. Charlene A Scott FCI Arb  
Chairman

Ms. Jocene Wade, Deputy Chair

Mr. Orin Simmons, Panelist

Mr. Craig Rothwell for the Claimant

Ms. Sarah Ann Tucker for the Respondent

Witness for the Claimant – Mr. Xxxxx

Witness for the Respondent- Mr. Xxxxx, Deputy Chairman for the  
Respondent

1. There had been a Directions Hearing on 11 December 2023 and a Further  
Directions Hearing on 18 March 2024. The Tribunal convened on 12 August

mess. And worse yet, what happens when a lie goes unchecked and egregiously damages someone's reputation and integrity? The words terminate and dismiss will be used interchangeably throughout the Decision.

6. Xxxxx, the Claimant in this case, had been working as a xxxx xxxx, at both Xxxxx and Xxxxx since July 2009, first being employed as an Assistant Xxxxx xxxxxx. He was responsible for the operations and maintenance of the grounds. There were no infractions against his work record at any time.
7. Unbeknownst to the Claimant, in April 2021, one of the mechanics at the xxxxx, a Mr. Joseph Dore (also known as Xxxxx) had contacted a Mr. Daniel xxxxx about purchasing a John Deere Sand Pro (JDS Pro) machine which was no longer used at the xxxxx xxxxx. Apparently Xxxxx had a long-standing relationship for over 20 years with Mr. xxxxx and had sold various items to him throughout the years. The Claimant had no prior knowledge of this inquiry. He was not the one who discussed selling the JDS Pro machine to Mr.xxxxx as he, the Claimant, had a monumental task of preparing the grounds at Xxxxx for the upcoming xxxxx XXXXX Xxxxx scheduled to take place later in xxxxx.
8. Mr.xxxxx saw the unused JDS Pro machine and said that he would like to purchase it. A price of \$500.00 was agreed on by the Claimant. During that same visit, Mr.xxxxx saw a second unused JDS Pro machine. This particular one supposedly did not even start. With that said, Mr.xxxxx was not deterred and stated that he would use it for parts. A price of \$250.00 was agreed between the two of them and the sum of \$750.00 was paid in cash to the Claimant for the two JDS Pro machines. When asked by the Claimant if a bill of sale was required, Mr.xxxxx said no.

15. After meeting with Xxxxx, that next day 27 May 2021, Mr.xxxxx for the Respondent, checked with the Financial Board Trustee to ascertain whether an amount of \$7000.00 had been deposited into the Respondent's bank account. No such funds were discovered in there. Nor did he confront the Claimant about this allegation of having sold the JDS Pros for \$7000.00. This would have been the earliest opportunity to do just that.
16. Given these circumstances and this damning allegation hanging over the Claimant's head, what might be the next 'best practice' and the sensible thing for Mr.xxxxx to do - perhaps have a meeting with the Claimant and ascertain if there is any truth to this allegation.
17. No, that did not happen or even the thought of conducting a proper meeting with him until after the Claimant had been arrested on 31 August 2021 and charged by the police for obtaining property (namely the two John Deere Sand Pros) by deception.
18. Just under two (2) months had now passed since the Respondent had been informed about this alleged \$7000.00 sale of the two JDS Pro machines in April 2021. No due diligence on their part was taken to ascertain the truth of what really took place and neither had it been fully investigated by the Respondent. They were told where the JDS Pro machines could be located and in early July 2021, two of the Respondent Trustees plus the acting head manager located them on Mr. property. They were out in the open and not hidden away from sight.
19. They never inquired as to how they arrived there. Instead, the Respondent Trustees of the xxxxx xxxxx opted for the police to be involved in this situation and left matter to them. On 31 August 2021, the Claimant was invited to the Police Station and was blindsided by what he was told. He was being charged

terms and conditions of his employment at the xxxxx xxxxs, had been negotiated by the Bermuda Public Service Union (BPSU), who was the collective bargaining agent together with the Civil Service General Orders. These General Orders had been updated back in 2001 and amended into what later became known as the Conditions of Employment and Code of Conduct (CECC). The updated version of the CECC was referenced in the hearing.

25. Given that a union was involved with the contract and given that there were likely procedures to follow if there was a disagreement between the parties, at no time was a proper disciplinary Charge ever laid before the Claimant.
26. Prior to the Claimant's arrest in August 2021, no disciplinary meeting was ever requested or held between either the acting general manager or the Respondent and the Claimant. Even if the Respondent deemed whatever occurred to be 'gross misconduct', the Claimant had a right to know what was going on and even more importantly, a right to be heard. The Claimant was never given an opportunity at the earliest opportunity to state his case.
27. Further, the 2000 Act, section 24(1) provides that –  

*'An employer shall be entitled to take disciplinary action, including giving an employee a written warning, or suspending an employee, when it is reasonable to do so in all the circumstances...'*
28. Reasonableness was not a factor in this matter. It was a one-sided affair where another employee went and told lies about his superintendent. The Claimant was never questioned at any point prior to being arrested about his part in all of this so that the Respondent could begin figuring out what was reasonable in all of the circumstances. How one arrives at what is reasonable for the purposes of section 24(1) is laid out in section 24(3). There are 9 aspects of how to identify aspects and behaviours of the employee to assist and guide an employer when faced with what is reasonable and what is not

monies were safely stored within a notebook. As the Claimant rightfully stated, he had no control over his desk drawer once they suspended him and he needed a safe place to store the money until he handed it over to someone. These monies were then handed over to the acting general manager who counted it and later in the day, handed it over to the police.

32. The Claimant did not at any time benefit or profit from the sale of the missing equipment as the documents regarding the case can confirm. There was no theft of the items. There was a proper exchange of monies for old, unused equipment that was laying around on the property collecting dust. Later, Mr.xxxxx would verify the amount of the sale of the JDS Pro machines in the Magistrates' Court hearing. The monies remained at all times on the xxxxx xxxxx property, until handed over to the acting general manager who in turn handed it over to the police. There was an appropriate chain of custody of the funds.
33. Much ado was made in the hearing about why the Claimant did not hand the monies over earlier. As he said in evidence, he placed it in his drawer and forgot about it until he was suspended. He was busy working long days and weekends getting the grounds in order for the xxxxxing event. Once the safety of the monies was in jeopardy and he needed to find a safer place to hold it. His friend's locker became that safe place.

## **CONTRACTUAL OBLIGATIONS**

34. For all intents and purposes, the Claimant is a government officer who had to abide by the terms and conditions of his contract. If anything relating to job

imposed only [our emphasis] by the Head of the Public Service. This did not happen as no referral was made to the Head of the Public Service.

38. In the Agreement between The Bermuda Government and The Bermuda Public Services Union (BPSU), Article 22 - Termination references the CECC and states as follows: 'As defined in the Conditions of Employment and Code of Conduct'. [our emphasis]
39. The bottom line is that the processes and procedures set out in the CECC reigns/takes precedent in all disciplinary matters of government employees and more particularly, in situations where there is an allegation of theft which is considered gross misconduct under the CECC. These processes and procedures must be adhered to by all parties to the contract.
40. The BPSU Agreement Clause 14.2 states as follows:

*' The procedure for discipline shall be described in the CECC and the PSC Regs. 2001 and subsequent amendments...'*
41. The Respondent tried to say that they could manage their own affairs. None of these regulations or procedures apply to how the Respondent themselves operate their affairs in their meetings or what they have to do with managing the grounds, but they are very much a part of how government employees are to be managed and disciplined. None of these procedures and protocols were followed at all by the Respondent. It was truly a case of the blind leading the blind as well as the fact that the Respondent had prejudged the Claimant without even ascertaining his side of the case before having him arrested and set in motion a dangerous set of affairs.
42. The Claimant was suspended without pay for not attending a scheduled meeting, despite the fact that he duly advised the acting general manager

45. The manner in which the Claimant's case was handled did not comply with the established grievance procedures or Human Resource 'best practices'. No thorough and independent investigation was ever conducted by the Bermuda Government's Department of Employee and Organisational Development to verify facts of the case and the purported theft allegations.
46. Additionally, at the earliest instance, the Claimant was never afforded the opportunity to present his case or to defend himself through the appropriate channels. His clean work record of over 11 years of service, with no prior disciplinary actions or warnings, was completely disregarded in the decision-making process. The failure to follow due process not only undermines the integrity of the termination but also reflects on a lack of commitment to fair employment practices.
47. Following on from the Respondent's report to the police, the Claimant was arrested and charged with theft of the JDS Pros. However, some 18 months later in 2023, the Magistrates' Court case was ultimately dismissed due to a lack of substantial incriminating evidence and thus the Claimant had 'no case to answer' and was acquitted of the charge on 22 February 2023. This discharge in the Magistrates' Court highlights the premature and unfounded nature of the accusations that led to the Claimant's termination. The absence of credible evidence in the Magistrates' Court further supported the conclusion that the Claimant was wrongfully accused and unfairly dismissed.
48. The Claimant's termination, given his long-standing service and clean record, has caused undue harm to his professional reputation and personal well-being. The then acting general manager and the Respondent failed to exercise the necessary due diligence, caution and fairness in their actions, resulting in an unjust outcome. Moreover, the mishandling of this case reflects poorly on the Respondent's commitment to upholding human

53. The Respondent would like the Tribunal to appreciate that under the Xxxxx Act 199 (the Xxxxx Act), the Respondent could regulate their own procedures which in their minds included terminating the services of an employee of the xxxxx xxxxx. When one refers to section 3(4) of the Xxxxx Act, it states that *'... the Schedule has effect with respect to the constitution and proceedings of the Board.'*
54. When one reads the Schedule in the Xxxxx Act, it refers to how the Respondent will manage and conduct themselves in their meetings. There is no reference to disciplinary proceedings and more particularly, to the termination of employees. The Schedule to the Xxxxx Act advises the Respondent on how they will manage their affairs in any and all meetings held pertaining to the running and maintenance of the xxxxx xxxxxs, but this Schedule does not apply to the hiring and the dismissal of Bermuda Government employees.
55. The Respondent may vote on whether to keep or release someone and then direct that the general manager follow through on it. Thereafter, the manager or acting general manager, in this instance, must ultimately follow the steps as are laid out in the CECC and the Public Service Regulations as well as all other applicable agreements such as the Collective Bargaining Agreements that have been agreed between the BPSU and government. None of that was adhered to. It appears that everyone went rogue and failed to act on signed agreements. Worse yet, basic common sense went out of the window.
56. The BPSU's role in this matter was effectively diminished and thwarted because the Claimant was arrested before he knew anything about the allegation of theft of the JDS Pro machines and the possibility of any disciplinary proceedings that might ensue. The Claimant, given that there



60. It was also clear from the lack of evidence led by the Respondent that the acting head manager failed to advise them of procedures to be followed for a suspension and/or a dismissal of an employee or it may have been that the Respondent failed to adhere to any such suggestions or directions. What the Tribunal notes is that there was a clear disregard to the Claimant's rights to a fair hearing and his constitutional rights to silence if he is charged with a criminal offence.

61. In the updated CECC, there is a letter on page 5 of the revised and updated CECC dated 1 June 2021. This version of the CECC was in effect as at the time of the unfolding of these events. The then Head of the Public Service - Dr. Derrick Binns stated the following in the 2<sup>nd</sup> paragraph of that same letter:

*' ... As a reminder, your employment contract comprises your signed contract of employment, the Conditions of Employment and Code of Conduct (CECC), the Public Service Commission Regulations 2001, and the Collective Bargaining Agreement between the Government and the Bermuda Public Services Union. ... All Public Officers are required to become familiar [our emphasis] with the CECC's Contents and with all of the changes ...'*

62. Under the 2000 Act, section 25 which pertains to summary dismissal for serious misconduct, it states as follows:

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

*(a) which is directly related to the employment relationship; or*

*(b) which has a detrimental effect on the employer's business,*

*such that it would be unreasonable to expect the employer to continue the employment relationship.*

63. None of what occurred could fit in either of those two categories as are listed in section 25 of the 2000 Act. What was alleged to have occurred happened back in April 2021 and the Respondent had no real clear evidence of gross

Claimant, prepared Xxxxx by himself. We were told in evidence that his assistant had resigned back in June 2021 and only he was working long days and weekends on the xxxxx xxxxx grounds for the international XXXXX Xxxxx event which was to take place on xxxxxxxxx.

67. From what the Tribunal heard and what it looked like was that the Respondent obtained free labour out of him. As they neared the actual international event start date, that is when it appeared that a decision was made to suspend him without pay on 30 September 2021 and then terminate his services on 9 October 2021. At no time did the Respondent acknowledge the Claimant's hard work and preparation of the xxxxx xxxxx for the international XXXXX event as well as offer some form of a bonus for his dedicated work. Instead, it was the complete opposite: the Claimant's employment was terminated.
68. In conclusion, the Tribunal takes into account the procedural disciplinary failures, the reliance on unreliable testimony, and the lack of substantiated evidence in assessing the fairness of the Claimant's termination.
69. It is evident that the acting general manager and the Respondent failed to follow the appropriate processes as set out in the CECC, Article 22 of the Agreement between the Bermuda Government and the Bermuda Public Service Union that refers to the CECC and the Second Schedule of the Public Service Commission Regulations 2001 (PSC Regs 2001), which ultimately lead to an unjust outcome for the Claimant. The Second Schedule was pre-empted by the failure to inform the Claimant at the earliest opportunity of what they deemed to be gross misconduct.

72. All in all, the Respondent has failed to discharge his duty to show that the Claimant was fairly terminated. The Second Schedule of the PSC Regs 2001 were never followed and the Claimant was wrongfully dismissed.
73. Through a series of blatant missteps and failure to follow outlined disciplinary processes, the Respondent unfairly terminated the Claimant's contract. This matter was never referred to the Head of the Public Service (the Head) as it should have been (Reg. 24(2)) as the Head is the only one who could effect such a dismissal after conducting a hearing.
74. Given the Claimant's clean employment record, the number of years in the position as well as the lack of existing policies at the time regarding the disposal and sale of old equipment, we order that pursuant to section 40(1)(a) of the 2000 Act, the Claimant be reinstated and be treated in all respects as if he had never been dismissed.
75. In the 2000 Act, section 2(3) states as follows:
- 'Where any of the rights of an employee established by any other Act, agreement, contract of employment, custom or practice are more favourable than this Act requires, the provisions so established prevail over this Act.'*
76. Through no fault of his own, the Claimant was unfairly dismissed from his position as the xxxx Xxxxx. Without a proper hearing before the Respondent at the earliest opportunity and without the Respondent hearing the Claimant's side of the story, he was dismissed. The Respondent found him 'guilty of an offence' where they had only the hearsay evidence from a subordinate to the Claimant and half a picture of what was alleged to have happened. The matter went before a Magistrate and because of the lack of evidence to show

82. Any party aggrieved may appeal to The Supreme Court of Bermuda on a point of law.

83. The Tribunal makes no further determination in this matter and as such is *functus officio*.

Dated this 11<sup>th</sup> day of September 2024.



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Charlene A Scott FCI Arb  
Chairman



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Jocene Wade  
Deputy Chair



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Orin Simmons  
Panelist