

IN THE MATTER OF A COMPLAINT UNDER THE EMPLOYMENT ACT 2000 BEFORE THE
EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL ("the Tribunal")

BETWEEN:

Mr. Calvin Philpott

Complainant

AND

Respondent

DECISION

Date of Complaint: 26th November 2024
Date Investigation Completed: 29th January 2025
Date of Referral: 14th February 2025
Date of the Hearing: 25th July 2025

Tribunal Panel Members: Ms. Kelly Francis, Chairman
Mrs. Judith Hall Bean, Deputy Chair
Mrs. Betty Christopher, Tribunal Member

Present: Mr. Calvin Philpott (Complainant) ("They"/"Them"/ "He")

Witnesses for Respondent:

- Mr. /
- Mr.
- Mr. (Ordered Witness)

Mr. field (Respondent)

Ms. (Respondent)

Witnesses for the Respondent:

- Ms.
- Mr.

- M
- M

The Complaint was filed pursuant to provisions of Section 37 of the Employment Act 2000 ("the Employment Act").

Background

Further to the Hearing held on 25th July 2025 ("the Hearing") between Mr. Calvin Philpott ("the Complainant") and ("the Respondent/ the Company"). The Complainant is claiming that despite having worked for the company for six and a half years (January 2018 – November 2024), the Company violated Section 18 of the Employment Act 2000 by unfairly terminating his employment without engaging in a progressive disciplinary process. The Complainant is seeking reinstatement as well as compensation of no less than \$24,000.00 to cover the impact of termination, specifically the loss of health insurance and subsequent out of pocket medical expenses incurred shortly after his termination.

The Respondent's position is that the Complainant was terminated for Serious Misconduct for causing significant structural damage to a storage rack in the and failing to report the damage as is required, resulting in a significant health and safety violation.

The Hearing

Prior to the start of the Hearing, the Parties were invited to try to reach an independent agreement but elected to proceed with the Hearing.

Due to the number of witnesses, The Tribunal commenced with each witness affirming their statements and answering follow-up questions.

1. Mr (for Complainant). Mr. a former employee, was not employed at the time of the incident but confirmed the following:
 - a. Depending on the weather and humidity levels, the floors were known to get slippery causing the to lose traction.
 - b. The Company had a strict "strike something / say something" policy to encourage people to speak up at once if there is an accident. If an accident happens and the person speaks up, they may get a warning, if they don't and it is found out, they could be suspended.
 - c. Cameras are in place.
2. Mr. (for Complainant). , a former employee, was not employed at the time of the incident but confirmed the following:
 - a. Protocol was to report any accidents to the Supervisor or Manager
 - b. The Cameras would be used to identify who caused the accident if no one came forward.

- c. The intercom system was used to invite people to come forward if an accident was discovered.
 - d. Any incident, major or not, must be reported immediately as they are safety violations.
 - e. He was not aware of the "strike something/say something" policy and had no knowledge of what disciplinary action took place against people who have accidents.
3. Ms. _____ (for Respondent). Ms. _____ was aware of the damage Mr. Philpott caused on November 4th, 2024, having heard a noise and assisted him as he tried to straighten the leg and reposition the rack. She believed the Complainant was planning to report the incident, but on November 7th, 2024, she reported the incident to the Manager after, in her words, giving him the opportunity to say something. Ms. _____ confirmed the following:
- a. Everyone knows accidents had to be reported; it was repeated a lot in meetings.
 - b. The action taken if there was an accident depended on how serious the damage was and if the person reported it.
 - c. She was surprised when the Complainant did not immediately report the accident, especially since he was getting ready to go on holiday.
 - d. She felt the accident/damage caused was serious and grew worried when she did not see anyone coming by to inspect the damage.
4. Mr. _____ (Ordered Witness for Complainant). Mr. _____ was not employed at the time of the incident, but as a former manager, he confirmed the following:
- a. Everyone knew the requirement to report incidents immediately, and if nothing was said, it was viewed as dishonest, and the person would face disciplinary action.
 - b. The intercom was used as a courtesy to give the person one final chance to come forward.
 - c. He believes the action taken against the Complainant was justified based on his understanding of the circumstances and the policies in place.
5. Mr. _____ (for Respondent). Mr. _____ confirmed the following:
- a. There was a lot of communication about the importance of reporting accidents, and everyone knew the protocol and the requirement for immediate reporting.
 - b. He was responsible for inspecting the damage and stated the accident had fractured a load-bearing leg and there was a risk that the rack could have collapsed.
 - c. In his opinion, the Complainant tried to hide the damage.
 - d. He believed that the Complainant was treated as usual under the circumstances.
 - e. He noted that the Complainant has reported accidents in the past, and he hoped he would have come forward this time.
6. Mr. _____ (for Respondent). Mr. _____ confirmed the following:
- a. Everyone knew of the requirement to report accidents. During staff meetings, the importance of reporting was stressed, and staff were notified that the Company had moved to a zero-tolerance policy.

- b. If an accident was not reported, they would use the intercom to invite the person to come forward.
- c. Disciplinary action ranged from write-ups to suspension to termination.
- d. He agreed that the floors can get slippery.
- e. Upon review by the Manager, it was determined that the damage caused was serious, the leg had snapped, and the rack could have collapsed, so the risk was there
- f. When the Complainant returned from vacation, he met with him and asked if there was anything he needed to say, and he didn't.
- g. He was surprised and frustrated that the Complainant still didn't disclose the accident. In the past, the Complainant was known to report things.

The Complainant asked Mr. if he felt it was uncharacteristic for him not to report the accident, why didn't he just ask him? Mr. explained he was off the day after the accident was reported, and he felt the Complainant had been given ample time to report the accident without prompting. The Complainant mentioned the leg snapped at a point where it had previously been repaired, already making it vulnerable. Mr. disagreed.

The Complainant made the following points during his statement:

- 1. He was not being dishonest; he had a lot on his mind (busy and stressed), with his upcoming vacation and a scheduled surgery for his young child and simply forgot.
- 2. He conceded he dropped the ball but felt consideration should have been given for his previous behavior of supporting the importance of reporting accidents and having himself reported accidents in the past.
- 3. He stated he had a lapse of judgement and forgot to make the report before leaving on vacation and by the time he returned, it had slipped his mind.
- 4. There were no penalties if a person reported an accident.
- 5. He believes that when he was called into the meeting, the decision to terminate him had already been made.
- 6. He feels let down by the Company who showed no grace and that over the years of his employment, he had demonstrated that he was of good character and supported and abided by company policies so it should have been clear that this was not usual behaviour for him.
- 7. After the accident, he says he tried to stabilize the leg and then simply forgot about reporting it. The Tribunal questioned him about this, and he stated that passing by the rack on the days after the accident didn't trigger any reminders. He stated that he could have been asked about it on that Friday once the accident had been reported by Ms. and no one did.
- 8. He believes the consequences of failing to report should have been limited to a verbal or written warning or even a suspension but not termination. He didn't feel it needed to be escalated up the management chain.
- 9. The Complainant also stated that the Company lacked any humanity by refusing to extend his health insurance for a few more weeks so his child's surgery which they know about, could have been

covered. He stated their refusal has resulted in him having incurred a tremendous amount of debt and they could have chosen to act differently.

10. The Complainant closed by apologizing for having dropped the ball, stating he was glad no one was hurt and that he appreciated his time at the Company.

The Respondent made the following points during their statements:

1. The Company takes health and safety in the extremely seriously; there are written policies, signs everywhere, and consistent messaging in meetings. All staff, including the Complainant, were fully aware of the requirement to immediately report an accident and the consequences for failing to report.
2. The Company provided evidence that the Complainant had signed the necessary health and safety policy documents.
3. The damage caused by the Complainant is qualified as very serious and one of the more severe cases of damage to occur. As such, it posed a significant risk to other staff if left unattended, as it could have collapsed at any time.
4. The Company believes the Complainant attempted to disguise the damage and chose not to report the accident, constituting a serious safety violation.
5. The Company refuted the claim by the Complainant that the structure was already weakened due to previous damage and subsequent welding. The Complainant states that the welding point would have made the structure more vulnerable to repeated fracture. The Company states that the welded point would have been stronger, to cause the damage the Complainant made would have required a significant amount of force.
6. The Company stands by its decision to terminate the Complainant as he a) caused significant damage, b) failed to report the damage, and c) when given a last opportunity to let them know about the accident, did not do so.
7. The Respondent addressed the Complainant's assertion that the decision to terminate health insurance just weeks before his child's surgery was cruel and unnecessary. They stated that the termination of insurance was carried out as standard practice, and the timing was in line with the actions taken with all terminated employees. The Respondent stated there was no basis for extending health insurance coverage to the Complainant.

Tribunal's Deliberations

The Tribunal, having heard the representations from both Parties, considered relevant provisions of the Employment Act 2000 in determining whether the Complainant was dismissed unfairly and is due compensation as requested in his claim.

The Tribunal was not persuaded by the Complainant that the actions taken by the Company constituted unfair dismissal as outlined in Section 28 of the Employment Act 2000.

The Tribunal was persuaded by the Respondent that the Company's decision to forgo disciplinary action as outlined in Section 24 1 – 3 of the Employment Act 2000 and move to immediate termination was reasonable.

Lastly, the Tribunal was persuaded that the Company's decision to terminate for Serious Misconduct in accordance with Section 25 of the Employment Act 2000 was justified. The Section states:

Section 25 Summary dismissal for serious misconduct

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.

DETERMINATION AND ORDER OF THE TRIBUNAL

The Tribunal, in accordance with Sections 28 (Unfair Dismissal) and 39 (Remedies: General) of the Employment Act 2000, **does not award** anything to the Complainant with respect to his claims of unfair dismissal.

The Parties to this Hearing are reminded that the Determination and Order of this Tribunal is binding and that either Party aggrieved by this Order may appeal to the Supreme Court of Bermuda on a point of law only within 21 days following receipt of notification of the Order.

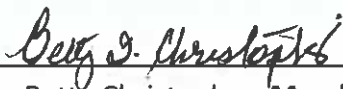
TRIBUNAL MEMBERS SIGNATURES



Ms. Kelly Francis, **Chairman**



Mrs. Judith Hall Bean, **Deputy Chairman**



Mrs. Betty Christopher, **Member**

Dated this 25th day of August 2025