

**IN THE MATTER OF A LABOUR DISPUTE UNDER THE EMPLOYMENT ACT  
2000 Section 38**

**BEFORE THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL ("the  
Tribunal") BETWEEN**

**Carla Crockwell**

**Claimant**

**and**

**: ("the "}**

**Respondent**

**Direction Hearing: 26th May 2025**

**The Hearing : 11th August 2025**

**Present:**

**Members of Tribunal:** John Payne, Chairman

Michelle Scott, Deputy Chair

**Complainant:** Carla Crockwell, representing herself.

**Respondent Representative:** ; co-owner, via video conferencing

**Preamble**

The third Tribunal member declared a conflict the morning of the Hearing. It was decided to proceed with the Hearing exercising Schedule 12 Conflict of Interest for the substantive hearing.

## **The Issue**

### **The Complainant is alleging unfair dismissal under the Employment Act 2000, Section 28.**

In opening the Hearing, the Chairman indicated that he wished to address two points:

- A. The first was the physical absence of the Co-Owner. It had been stated at the Directions Hearing that persons were expected to be physically present for the Substantive Hearing. The Co-Owner apologized, stating that while the matter was discussed at the Directions Hearing, he did not recall a firm decision being made and that he has some parental responsibilities that required him to be overseas.
- B. The absence of the witness. The Chair advised that as the witness statement was not sworn, the Tribunal was not prepared to accept the document, as the witness cannot be cross-examined. The Respondent asked that the statement be entered and retroactively be sworn as the witness was medically unable to attend. The Chairman denied this request.

## **Complainant Case**

- 1. The Complainant, in her Statement of Claim, indicated that she is a qualified and licensed Nursing Assistant.
- 2. That she was engaged by the Respondent from 18th November 2024 and was terminated on 13th January 2025.
- 3. She claims that she was engaged as a skilled Care Worker and not a personal caregiver, as alleged by the Respondent.
- 4. No Statement of Employment or pay statement was ever provided.
- 5. She was paid \$25 per hour for shifts from 8 am to 1 pm with no deductions. The hours were logged in a blue notebook.

6. She took pre-approved unpaid leave from 22 November to 6 December 2024, returning to work on the 7th December 2024.
7. She claims that at no time was she advised by the Respondent that she was an Independent Contractor or that she was on probation.
8. Her employment was terminated on 13th January 2025 without a reasonable excuse being given. She was advised via telephone that she *"cannot come and go as she pleases."*

### **The Hearing**

The Chairman indicated that, having read the documentation presented to the Tribunal, he was going to deviate from the normal format and instead ask questions for clarification.

### **Employment Relationship (section 4) and section 19(4) probationary period**

The Respondent was asked to address the employment arrangement as the Complainant believed that she was an "employee" as defined by section 4 of the Employment Act 2000, and the Respondent was asserting that she was engaged as an "independent contractor".

In response, the Respondent stated:

- a. there was a worldwide shortage of nurses and nursing staff;
- b. that Care Facilities had to supplement their staffing requirement for short term when staff were on leave for whatever reason;
- c. it was therefore necessary to engage persons for short periods to fill these gaps;
- d. such persons in Bermuda were always independent contractors;
- e. that during the interview process with the Complainant, no discussion of benefits of any kind was had;
- f. she was considered casual at best therefore she did not qualify as an employee under the Act and did not require a contract.

### **Termination (section 27)**

The termination was given orally and no documentation was provided. The Respondent indicated that the Complainant was unreliable and that the Employer had a duty to ensure its clients were properly cared for. Regardless of whatever job title was given to the Complainant, the Respondent was entitled to terminate her for cause.

### **Notice Period (section 20)**

The Respondent when questioned regarding a notice period indicated that:

- a. the Complainant was terminated for serious misconduct and that the Home was entitled to terminate without notice;
- b. this decision was based on the Complainant not reporting to work on two separate occasions - 16th November and 21st December 2024 and without giving any explanation for her absences or apology;
- c. when questioned the Respondent indicated that the Complainant was paid monthly as were all staff in the facility.

### **Complainant Response**

The Complainant was asked to comment on the responses from the Respondent:

1. She advised that she had over 30 years as a skilled care giver, but this was primarily in the private home of clients.
2. She was interviewed by the                      /Owner on the 6th November. During the interview no mention by either party was made regarding salary or conditions of employment, just the scope of work including being required to work 8 am to 8 pm.
3. She advised that while uncomfortable with the lack of information she was not employed at the time and felt it was better to receive some money. The gaps in information could be cleared up later.
4. Employment started on the 13th November and she worked on 13th, 14th and 15th. She did not report for duty on the 16th as she did not

believe that the pay offered at \$20 per hour was adequate for her experience and skills.

5. The reason for her absence on the 16th November 2024 was related to her discussion about the hourly pay with the Head Nurse on the 15th November and relayed in an email on the morning of 16th November.
6. The Complainant claims that having researched the wages for the industry including at the CPT code for HIP and Futurecare insurance plans she was entitled to at least \$25 per hour.
7. In response to that assertion the Complainant alleged that the Head Nurse indicated that the Facility could not afford \$ 30 an hour and the Parties agreed to \$25 per hour per day working from 8 am to 1 pm.
8. During the questioning, the Complainant stated that she had not been paid for the 13, 14, 15 November 2024. This was the first time that this allegation was being made and the Respondent indicated that he wished this matter had been raised before as he could not verify if that was correct.

The Chairman asked the Respondent to investigate the allegation and respond to the Tribunal Administrator.

### **Deliberation**

The Tribunal in its deliberation considered the employment arrangement of the Complainant, the need if any, for a probationary period and the notice of termination:

- a. There could be an argument that because the Complainant did not have deductions from her wages, she was not an employee as defined by section 4 of the Act. However, the lack of a letter of employment and with no indication that the engagement was for a fixed term it is difficult to believe that the Complainant was not an employee as defined in section 4.

- b. Therefore Section 19 of the Act, Probationary Period would be applicable. This section states, *"a new or promoted employee **may** be required to serve a probationary period for not more than six months...."*
- c. However, within the industry it is normal for staff to be initially engaged on a probationary period. It is difficult to believe in the absence of any documentation that the Complainant was otherwise engaged.
- d. Failure to give proper notice is inconsistent with the legislation regardless of whether a worker is an employee or independent contractor.
- e. That section states, *(1) a contract of employment may be terminated in accordance with this Part by the employer on giving the following minimum periods of notice in writing (the statutory notice periods)-*
  - i. *one week, where the employee is paid each week;*
  - ii. *two weeks, where the employee is paid every two weeks;*
  - iii. *one month, in any other case.*
- f. There are exceptions to this section as specified in subsection (2) but these exceptions are not applicable in this case as no letter of employment was provided that would have clarified the conditions stated in subsection (2).
- g. However, no evidence was provided by the Respondent that the Complainant was advised, and she understood that she was being engaged as an independent contractor.

### **Determination and Order**

The Tribunal in considering the representations from both sides Determined that:

- a. The Complainant was not engaged as an independent contractor but fulfilled the requirements of section 4.
- b. The Employer violated the Employment Act 2000 sections 6, 7 by not providing a Statement of Employment and an Itemised Pay Statement.
- c. The terms of employment were never made clear by the Respondent, nor did the Complainant seek clarification. This showed a surprising lack of business acumen by both parties.
- d. The Complainant was unfairly dismissed and is owed in lieu of notice as required by section 21.
- e. The Complainant having worked less than 12 months is not entitled to any compensation for unfair dismissal as set out in section 40.
- f. The Complainant is owed for 15 hours worked 13, 14,15 November 2024

### **Order**

The Tribunal hereby orders that:

- a. The Complainant receive one month's wages in lieu of notice;
- b. Any other wages that was unpaid.
- c. These amounts are to be paid within 30 days of receipt of this Order.

### **Tribunal Procedural Matters**

1. According to section 44E, no report on or comment on this matter may be made by either party that is not a fair and accurate report or summary of the proceedings.

2. If either party makes any report on or comment on this matter contrary to section 44E, such party shall be liable to a civil penalty.
3. 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.
4. According to section 44 K, either party aggrieved by this decision has the right to ask a question about interpreting the Tribunal award.
5. Under section 44O, either party aggrieved by this decision has the right to appeal to the Supreme Court on a point of law within 21 days after receipt of notification of this award of the Tribunal.
6. The Tribunal does not award legal costs to any party to these proceedings.

**Tribunal Members**



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John Payne Chairman



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Michelle Scott, Deputy Chairman

**DATED** 19 August 2025