

**IN THE MATTER OF A DISPUTE UNDER THE EMPLOYMENT ACT 2000  
BEFORE THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL**

**BETWEEN**

**Complainant**

**AND**

**Respondent**

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**DECISION**

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**Dates of Hearing:** 30<sup>th</sup> June 2025 and 21<sup>st</sup> July 2025

**IN ATTENDANCE**

**Members of Tribunal**

Keren Lomas, Chairman  
Robert K. Horton, Deputy Chairman  
Judith Hall-Bean, Member

**Complainant**



**For Respondent**

, Human Resources Manager,

s Ltd.

Sales Manager, [21<sup>st</sup> July 2025 only]

**TERMS OF REFERENCE**

*To determine whether the Complainant was unfairly dismissed from his employment at Ltd.*

**HEARING OF 30<sup>TH</sup> JUNE 2025**

**INTRODUCTION**

Neither Party had filed sworn statements. Therefore, the Complainant in evidence swore to the truth of the contents of the documents that he had filed in support of his claim and the Human Resources Manager, swore to the truth of the contents of the documents that had filed in response.

**BACKGROUND FACTS: UNDISPUTED**

1. The Complainant had been a self-employed plumber when he applied to the Respondent company for a position as a full-time sales associate. The potential employer was “excited” at the prospect of the Complainant joining its team as his resume was impressive, describing himself as a team player with verbal and personal communication skills and in possession of a Certificate in Plumbing Technology from Bermuda College. He had set out his prior work experience and the fact that he was a member of the Human Rights Tribunal.
2. Although the date of the Complainant’s commencement of employment with was initially disputed, it was later accepted that he commenced employment on 17th October 2024.
3. By the employment contract dated 10<sup>th</sup> October 2024 that was signed by both Parties, it was agreed, inter alia, that the standard operating hours of the business were Monday through Friday, 7:00 a.m. to 5:00 p.m., with a Saturday off on a rotational basis and a half day off work for “personal time”. Salary was to be paid weekly at the rate of \$28 per hour for work hours, including those exceeding 40 hours a week, but in the Complainant’s employment contract, there was no



provision for payment of overtime. The probationary period was specified as 90 days from the start of employment.

4. The Complainant's employment contract was terminated during the probationary period on 29th November 2024.

#### **COMPLAINANT'S EVIDENCE**

5. On 28th October 2024 he was called into the Sales Manager's office where Mr [REDACTED] the Sales Manager, expressed his dissatisfaction with his knowledge of plumbing and that his continued employment would be subject to review. The Complainant told the Sales Manager that he was new to the job and to the Payment Operations System [POS] and that, in response, the Sales Manager told him "to take it as a challenge and prove them wrong". The Complainant alleges that he did not get training on the POS system and no other training for job performance.
6. The Complainant acknowledged that he had problems serving the Filipino plumbers who would either throw fittings at him over the counter or ignore him, choosing instead to be served by another employee even though he was available to serve them. He said in his Statement of Complaint that he had brought these matters to the attention of the Sales Manager with no apparent result. The Sales Manager then tasked him with taking inventory and later assigned him duties in the warehouse away from the customer service floor.
7. On Wednesday, 22nd November 2024, he arrived at work feeling unwell and was told to return home by his co-worker, [REDACTED], who also told him that she would advise Managing Director Mr [REDACTED]; that she had authorized him to return home.
8. While at work on 24th November 2024, the Complainant learned that he was allowed 2 days off work on sick leave without a doctor's note. He informed the Sales Manager that he was going to see the doctor that day and would deliver the doctor's note to [REDACTED] following the medical appointment. However, he had received the doctor's sick note by e-mail and planned to e-mail it to his employer upon his arrival home. Upon preparing to e-mail the doctor's note to his employer, he saw an e-mail from his employer indicating that his employment at [REDACTED] would be terminated with effect from 29th November 2024.
9. Upon asking the Sales Manager why he had been terminated, the Sales Manager responded that he had no knowledge of the termination and asked the



Complainant if he wished to speak with the Human Resources Department regarding the matter. Upon asking the Human Resources Manager via telephone why his employment at [redacted] had been terminated, the only response received was concern for 'the safety of the workers'. The Complainant maintains that the Human Resources Manager, when asked for further clarification, refused to discuss the matter any further.

10. In general, the Complainant denies that he had acted inappropriately toward customers and denies also the more serious allegations of physical threats and verbal abuse.
11. The Complainant's allegation of workplace bullying was not seriously pursued in his evidence nor in his cross-examination of the Sales Manager.

#### **EVIDENCE OF WPSL HUMAN RESOURCES MANAGER**

12. The Human Resources Manager stated that the Complainant was not a "suitable fit for the position" and that this conclusion was reached after extensive observation, feedback and efforts to provide support and guidance to the Complainant. She stated that the Complainant lacked even the most basic knowledge of plumbing parts and tools and resisted constructive feedback. She said that the Complainant never reported that any customer or co-worker had thrown items at him and that such allegation was made only after termination. She informed the Tribunal that the Complainant was assigned inventory-related duties to determine if he would be better suited to "non-customer-facing responsibilities" and that he was terminated after the [redacted] management team had received multiple complaints from both customers and co-workers.
13. However, it quickly became apparent to the Tribunal that the Human Resources Manager was unable to provide direct evidence of such "lack of sufficient fit" without relying on hearsay evidence. Therefore, with the consent of the Parties and in the interest of justice and fairness to both Parties, the Hearing was adjourned until 21<sup>st</sup> July 2025 to enable the Respondent to produce a witness or witnesses who could give direct evidence of the matters that the employer alleged were rendering the Complainant's continued employment untenable.





## HEARING CONTINUATION: 21<sup>ST</sup> JULY 2025

### EVIDENCE OF

### . SALES MANAGER

14. Mr. \_\_\_\_\_ stated that he resided at \_\_\_\_\_. He confirmed that he held the position of Sales Manager at \_\_\_\_\_ and that he was the Complainant's supervisor during his period of employment at \_\_\_\_\_. He swore that the content of his Witness Statement of 3<sup>rd</sup> July 2025 was the truth.
15. The Sales Manager stated that the Complainant had been hired as a Sales Associate under his direct supervision. He stated that he had met with the Complainant who had expressed an interest in working with the Respondent company and was advised to submit his resume to the Human Resources Department for consideration. The Complainant subsequently submitted his resume as suggested.
16. The \_\_\_\_\_ management team, comprising Managing Director \_\_\_\_\_, the Human Resources Manager and himself, on reviewing the Complainant's resume agreed to offer employment to the Complainant with a 17th October 2024 commencement date.
17. The Sales Manager informed the Tribunal that he had been responsible for monitoring the Complainant's performance: within the first week of employment, he had received customer reports that the Complainant was unhelpful, that he exhibited poor conduct and that he lacked basic plumbing knowledge. He met with the Complainant in his office to address such issues and advised the Complainant to seek assistance when needed.
18. The Sales Manager told the Tribunal that he had been called upon to address sundry issues of poor performance with the Complainant after this initial meeting, but openly accepted that he had never made it clear that his discussions with the Complainant amounted to warnings that if he failed to do better, he would be terminated. The Complainant was never "warned" of the repercussions if his performance did not improve.
19. The Sales Manager categorized such additional discussions with the Complainant as "informal", although he believed, he said, such discussions amounted to verbal warnings.



## **COMPLAINANT'S CROSS-EXAMINATION OF SALES MANAGER**

20. The Complainant agreed that during his meeting with the Sales Manager in the Sales Manager's office, the Sales Manager had confirmed that he had received reports from plumbers of the Complainant's inadequate knowledge of plumbing. Responding to the Complainant's question, the Sales Manager accepted that in this meeting, the Complainant stated that he was new to the job and to the POS system. However, the Sales Manager added, the complaints were not about the Complainant's knowledge of the POS system. He said that there were complaints that the Complainant was not exhibiting the plumbing knowledge that the company expected or the knowledge that was indicated by his resume.
21. The Sales Manager accepted that the Complainant had told him he was seeking assistance from his colleagues and . . . . He told the Tribunal that on the first day of the Complainant's employment, he walked him through the stockroom and sales floor. He said that the company did not expect the Complainant to learn it all in a week, but that he should seek help from his colleagues.
22. Further, on the matter of the Respondent's complaints of improper conduct and verbal threats, the Sales Manager said that there was an incident in which the Complainant told . . . . Owner . . . . that if he was assigned duties in the yard, outside the store, he would get his contract and slap him in the face. The Complainant strenuously denied that this had taken place. The Sales Manager said that he could hear the Complainant shouting "Speak proper English" to some of his Filipino customers and added that it was not a good way of seeking clarification of requests for service made by Filipino customers. The Complainant also denied that he had spoken to the Filipino customers in the manner described by the Sales Manager. The witness told the Tribunal that he had addressed all these concerns with the Complainant, including the use of the "f" word, in informal discussions. The Sales Manager also told the Tribunal that the assignment of duties in the warehouse to the Complainant was not a form of punishment. There was no such punishment in the company, he said.
23. The Complainant asked the Sales Manager whether he had ever spoken to him about the alleged use of inappropriate language to colleagues or customers or about the alleged threatening verbal attacks and physical attacks on colleagues or customers. The Sales Manager responded that when he spoke, he tended to generalize. He added, "I don't remember." "Weren't all of those complaints worth a meeting stating concerns?" the Complainant asked. The Sales Manager offered no response to that question. However, he agreed that there was no documentation to support the allegations set out above.



24. In response to a question from the Tribunal, the Sales Manager confirmed he had never used the word “warning” in his discussions with the Complainant. He reiterated that such discussions were “informal” and the Tribunal opined that they could not be construed as formal warnings.

#### **FACTS FOUND BY THE TRIBUNAL**

25. Upon completion of the Complainant’s first week on the job, there had been a meeting between the Complainant and the Sales Manager to address concerns relating to the Complainant’s lack of adequate plumbing knowledge and poor customer service.
26. The Tribunal accepts that there were other discussions between the Sales Manager and the Complainant relating to the latter’s poor job performance. Although the Sales Manager categorized these discussions as “verbal warnings”, in fact, the word “warning” was not used and there was no indication to the Complainant during these discussions that if his job performance did not improve, he would be terminated.
27. These discussions between the Sales Manager and the Complainant were never recorded in the company’s Human Resources records. Nonetheless, the Tribunal finds that the Complainant’s poor performance on the job, his lack of knowledge of plumbing supplies and his poor customer service provided justified cause for his termination on 29th November 2024 within the probationary period.

#### **APPLICABLE LAW**

28. Section 19(2) of the Employment Act 2000 (“the Act”) states: *“An employee who is serving a probationary period shall be entitled to receive from his employer a review of the employee’s performance on or before the completion of one half of the probationary period.”*
29. Significantly, there is no provision in the Act requiring such review to be in writing; therefore, it can be reviewed orally instead. However, it is logical that if the review is in relation to the employee’s job performance and/or conduct, (and by subsection 19(4)(a) termination may be without notice “for any reason relating to job performance, conduct, or operational requirements of the employer’s business”), it must be made clear during that review that such review will or could affect the continuance of the employee’s employment.



## **CONCLUSION AND ORDER**

30. The Tribunal invited both the Complainant and the Respondent to make final submissions.
31. The Tribunal notes the Complainant's concluding statement that all of his concerns were set out in his original Statement of Claim and in subsequent written submissions that he had provided for the Tribunal's consideration. The Tribunal notes also the Complainant's new concern that the Sales Manager's sworn Witness Statement of 3<sup>rd</sup> July 2025, submitted after the initial Hearing of 30<sup>th</sup> June 2025, contained information that had not been drawn to his attention previously. The Complainant expressed a great deal of concern in that regard.
32. The Tribunal notes the Human Resource Manager's concluding statement that a key priority at                   . was the safety of both staff and customers. She added that as a customer service representative, it was important that the Complainant was knowledgeable about                   . procedures and that he dealt with both colleagues and customers in an appropriate manner. She maintained that because of the Complainant's failure in both areas, his termination should be upheld.
33. The Tribunal, having noted the final submissions of both the Complainant and the Respondent and all other pertinent information brought to its attention during the Hearing, finds that the Respondent failed to carry out a review such as anticipated by the Act, that is, a review of alleged unsatisfactory performance and conduct that could affect the employee's continuance of employment. That review was essential, the Tribunal maintains.
34. Therefore, the Tribunal makes the following Order:
- (i) The Complainant was unfairly dismissed from his employment at                    Ltd.;
  - (ii) The Respondent shall pay to the Complainant 2 weeks' salary at the contractual rate as requested by the Complainant, an amount of compensation the Tribunal considers just and equitable; and
  - (iii) Such payment shall be paid to the Complainant within 30 days and proof of payment shall be provided to the Tribunal Administrator of the Labour Relations Office.

11. 2000



35. Either Party that is aggrieved by this Order has the right to appeal to the Supreme Court on a point of law only within 21 days after receipt of notification of this award.


DATED this      day of August 2025.



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Keren Lomas

Chairman



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Robert K. Horton

Deputy Chairman



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Judith Hall-Bean

Member

