

**IN THE MATTER OF A COMPLAINT UNDER THE EMPLOYMENT ACT 2000 BEFORE THE
EMPLOYMENT & LABOUR RELATIONS TRIBUNAL BETWEEN:**

Nappassorn Piper

Complainant

AND

Respondent

DECISION

A. THE PARTIES

1. The Complainant is Mrs. Nappasorn Piper, and was the employee in these proceedings. Mrs. Piper was represented by Mr. Myron Piper.

2. The Respondent is _____, and was the employer in these proceedings. The Employer is Ms. _____, who was represented by Mr. Michael Absell of Conyers, Dill and Pearman Limited.

B. PROCEDURAL MATTERS

3. The Complainant filed her complaint with the Labour Relations Office on 10th July, 2024, and the matter was referred to the Employment and Labour Relations Tribunal on 29th November, 2024.

4. A directions hearing was convened on the 24th March, 2025 and the directions order was issued on that same date.

5. The parties were provided the opportunity to settle their dispute without the assistance of the Tribunal, but were unable to; instead, agreeing to proceed to the substantive hearing.

6. The Complainant was advised by the Labour Relations Officer that the Tribunal's parameters to consider remedies for the alleged breaches under the employment contracts of 2019 through 2021 and 2022 through 2024 - would be confined to the Complainant's period of employment under the employment contract 5th March, 2022 through 12th August, 2024. However the Statement of Claim still sought to have both two-year employment contracts (which had been deemed to be not continuous) amalgamated and remedied by the Tribunal.

7. Notwithstanding the above instruction, the Complainant confirmed that the nature of her complaint under the EA 2000, respectively, is for:

- a. Itemised Pay Statement - Section 7: For the period 11th March, 2022 through 9th August, 2024.
- b. Unauthorized Deductions - Section 8: Overcharging employment taxes and charging for internet and water.
- c. Vacation Pay - Section 12: Four (4) weeks or 20 days' vacation for the period of employment from 11th March, 2022, to 9th August, 2024.
- d. Constructive Dismissal - Section 29: The Complainant is seeking compensation for three (3) weeks each year, from 2022 through 2024.
- e. Confirmation of up-to-date employer/employee pension contributions from March 2022; and confirmation of up-to-date employer/employee social insurance contributions from June 2019.
- f. The Tribunal instructed the parties that it would not hear matters concerning tax and social insurance deductions, as both agencies would conduct their own investigations and direct on recompense as deemed necessary.

C. STATUTORY AUTHORITY TO HEAR THE MATTER

8. The Tribunal Hearing was convened on 9th June, 2025. The Chairman confirmed the points to be considered by the Tribunal. The Chairman stated that the Employment and Labour Relations Tribunal Hearing was being conducted in accordance with Section 44B (2), section 44C, General Powers and Section 44D, Power to Obtain Information, and that the Tribunal would regulate its own proceedings as it saw fit pursuant to Schedule 2 (20) of the Employment Act 2000 ('the Act').

9. Due to the Complainant's language limitations, her husband - who was also to serve as her Representative during each Hearing, was permitted to explain questions from the Respondent's Representative and from the Tribunal, when it was deemed essential for the Complainant's answers to be factual and relevant, and to be referenced for the purposes of cross examination and rebuttal; and for the Tribunal to fairly regulate the proceedings.

10. The Tribunal instructed the Complainant's Representative that he should not take liberties to interpret or restate the Complainant's answers or attitude, and that his interpretations of the answers or the Complainant's position would be closely scrutinized by the Tribunal - to avoid at all costs the Complainant's Representative exerting his personal positions on the matters, and providing witness testimony from the vantage point of their personal (marital) relationship.

D. POSITIONS OF THE PARTIES

The Complainant's Position

11. The Complainant's position is that she was unfairly dismissed by way of constructive dismissal following the filing of a complaint with the Department of Labour, for not receiving itemised pay statements, for unauthorized deductions and for not receiving vacation pay, and extra (overtime) pay when she worked on a public holiday. The Complainant's further claim is that she was never issued a new statement of employment after being previously employed with the Respondent from 2019 to 2021. When she was reemployed, the same employment contract from 2019/21 was used. While the current terms of employment were based on the previous contract of employment issued in 2019, there were newly agreed terms of: **1)** Receiving two (2) rest days versus one (1) rest day in the 2019 contract; **2)** Payroll Tax of 2.5% would be deducted (in accordance with the Complainant's wage tax bracket) but that she was overcharged - believing that only 0.5% should have been deducted; and **3)** Water and Wi-Fi deductions remained in the current contract; while she was being charged for the perks, the deductions were now at issue because she felt she never had a choice; and at a point, her internet access was "cut off" while the remaining staff retained their (internet) access. The Complainant further asserts that the Respondent began intimidating the Complainant and threatening other staff with termination if they supported the Complainant; thereby making the working environment untenable, and giving the Complainant no choice but to file a charge for constructive dismissal.

12. During the Complainant's previous 2019 to 2021 employment period - she claimed not to have received a \$2000.00 salary. She was currently disputing that the parties agreed that she would not be salaried rather, be paid 40% commission under the 2022/24 employment contract.

13. After a complaint filed by the Complainant with the Department of Labour on 9th July, 2024, the Respondent was issued a notification of complaint on 23rd, July, 2024. After which, on 9th August, 2024, the Complainant received a revised work schedule.

14. The Complainant's position is that once her complaint was filed, her work schedule was revised - which would limit her clients. And, that there was no consultation regarding the schedule revisions. On the day the revised schedule was presented, after the meeting, her keys were confiscated and she was then ushered out.

15. The combination of the Respondent's actions - taken against the Complainant - directly and indirectly, made her feel "bullied, ostracized and unable to maintain the (same) level of income, and to service her client-base to the best of her abilities". The Complainant believed she had no choice but to leave her employment and to claim that she was constructively dismissed.

The Respondent's Position

16. The Respondent's position is that the Complainant was regularly provided with pay period receipts that included the Complainant's wages and deductions. However, it is acknowledged

that the pay period receipts did not include detailed itemized information as required by Section 7, Itemised Pay Statement, of the EA 2000. The Respondent claimed that bottled water and wi-fi were additional, but non-essential benefits that were offered to staff. The Complainant opted to receive the benefit, but had the option (at any time) to not participate. When the Complainant voluntarily decided to no longer receive the benefits of bottled water and wi-fi access, the deductions ceased; as a result, she no longer had access to the . wi-fi.

17. When the Complainant was hired in March 2022, the Respondent's position was that the parties agreed that she would be commissioned; that the Complainant voluntarily agreed that she would not receive extra pay (overtime) for working on public holidays. Regarding not being compensated for vacation for the employment period 2022/2024: the Respondent agrees that while leave was taken by Complainant, that it was unpaid leave due to the Respondent's belief that as a commission-based employee, the Complainant was not entitled to be paid for her vacation leave.

18. The Respondent's position is that the Complainant's earnings were consistent over the three (3) months leading up to her leaving her employment. Because the Complainant was commission-based, her earnings were tied directly to the number of clients she served. That on any occasion when the Complainant had fewer clients - this was not due to the Respondent managing her client list rather, for example: due the Complainant's lateness or absence or as a result of clients requesting the services of other

19. The Respondent provided the Complainant with a revised work schedule at the Complainant's request, and denied that there was no consultation. That, during the review and signing of the revised schedule, the Complainant was not forced or pressured to do so.

20. The Respondent asserts that, notwithstanding the Tribunal's parameters to consider the Complainant's claim that she was overcharged for payroll tax, the correct portion was deducted by the Respondent.

21. The Respondent's position is that she treated all of her employees like family, therefore denying that her conduct made it impossible for the Complainant to continue the employment relationship. That the Complainant was not constructively dismissed rather, she voluntarily resigned from her employment.

TESTIMONY OF THE COMPLAINANT

22. **Tribunal Note:** Due to the parties both agreeing that the Complainant was not issued a new contract of employment when she was again employed by the Respondent in March 2022, there was consistent reference to the terms listed in the Complainant's former 2019 contract of employment; even though, liberty was taken by both parties to renegotiate some of the terms in the midst of the Complainant's re-employment.

23. To allow the Complainant's testimony to largely remain within the context of her Statement of Claim, and to avoid potentially prejudicial references and claims to the Complainant's first period of employment (which was not within the Tribunal's jurisdiction to adjudicate); and while allowing a large degree of latitude due to the Complainant's language barrier - and to avoid (her husband) testifying on her behalf, the Tribunal guided the Complainant's Representative (and his questions) during her testimony.

24. The Tribunal heard that the Complainant was employed at the _____ and _____ on successive one-year work permits from June 2019 to June 2021. Having worked to the end of her second work permit, the Complainant testified that she told the Respondent that she would go back to Thailand; that she did not want to come back to Bermuda, because she was not happy with the work relationship.

25. At the time of ending her employment with the Respondent in June 2021, the parties had nothing in writing to signify that the working relationship would continue into a second period of employment. Indeed, after the Complainant left the island, she and her Representative in this matter, became engaged. Returning to Bermuda in January 2022, they were later married in February.

26. The Tribunal heard from the Complainant that, during her time away from the island, she had no contact with the Respondent. However, they bumped into each other in the Market Place where the Respondent asked the Complainant if she would return to work for her, as she was short-staffed.

27. The Complainant stated that she was reluctant to accept the offer, but after learning that two staff (with whom she did not get along with) had left, she reconsidered the offer.

28. Before commencing her employment, the Complainant confirmed (that as a result of the meeting with herself and her husband and the Respondent), specific to her work schedule - her new work schedule was five (5) days a week with Sundays and Mondays off, and her compensation would be based on 40% commission. The Complainant stated that there was no conversation about vacation. She testified that there was mutual agreement that everything (from the first contract) would remain the same; again - except for her days off.

29. The Complainant commenced her new employment period on 5th March, 2022. She confirmed that she was not given a new contract to sign. Other than her days off changing, she would contribute 2% payroll tax.

30. The Complainant was asked about her understanding of her current employment contract. She answered by referring to the contract of 2019 that (although she was to have two (2) days off per week), she worked six (6) days per week and had one (1) day off per week; that day was Thursdays, and that she was to receive a salary of \$2000.00 per month.

31. The Tribunal believes the Complainant misunderstood the question, as further into her testimony she clarified that her current work schedule included two (2) days off per week which were Sundays and Mondays; that she was commission-based at 40%, but that she did not agree to that arrangement. The Tribunal noted that this statement was a contradiction from the Complainant's opening testimony when she stated that her new compensation structure was commission-based at 40%.

32. Continuing with the Complainant's understanding of her current employment contract, she stated that being deducted for bottled water and wi-fi were not included (in either contract).

33. When asked if she agreed to the deductions, the Complainant replied: No. She was told *"everyone had to do it"*, and she accepted it, but did not complain to the Respondent.

34. When asked about her agreement (or not) to be deducted for bottled water and wi-fi, the Complainant stated that in her initial meeting with the Respondent, it was agreed that *"everything would remain the same"*, and she did not object. But, she was told by the Respondent that if she did not agree to the deductions for the bottled water and wi-fi, that she would have to bring her own water from home.

35. When asked why she chose the bottled water, the Complainant stated that the tank was not cleaned, and she would not be able to boil her water while at work. And, that she believed all other workers were paying for bottled water. Because she did not wish to appear "cheap", she continued paying for the bottled water.

36. The Complainant testified that she would arrive to work at 7:00AM every morning, to clean i.e. wash towels. However, she later clarified that Wednesdays was her normal cleaning day; and that all of the staff assisted with the laundry.

37. The Complainant testified that three months into her employment, her days off changed to Sundays and Tuesdays, but that her working hours (9:00AM to 9:00PM) did not change.

38. On 9th August, 2024, the Complainant was given a revised work schedule to sign. The revisions regarded her days off being changed to weekends and her work time from 9:00AM - 5:00PM, with the Complainant's last appointment at 4:15PM.

39. The Complainant testified that when the revised work schedule was presented to her, the Respondent did not discuss the changes. However, when she asked the Respondent why the changes had been made, she was told it was because of the complaint that had been filed with the Labor Relations Office. Further, that the new schedule would commence on that same day of 9th August.

40. When asked what happened after the revised work schedule was signed, the Complainant said the Respondent asked her to return her keys (to the) - which she did. She confirmed that she did not work between the 9th and 12th of August.

41. When the Complainant was asked 'how she resigned', she replied that she went to the to return her uniform and told the Respondent that she no longer wished to work for her.

CROSS EXAMINATION OF THE COMPLAINANT

42. Counsel for the Respondent began his questioning by referring to the Complainant's first period of work with the Respondent. As such, the Complainant confirmed that she ended her first period of employment in June of 2021.

43. Referring to the Complainant's letter of complaint to the Labour Relations Officer - included with her Statement of Claim - in which the Complainant stated: she told the Respondent that she would return to and not return to Bermuda because she was unhappy with the working relationship. She was asked whether that statement was true, and whether the actual answer to the Respondent - when asked if she would return to Bermuda was: "if she was lucky". The Complainant did not respond.

44. The Complainant confirmed that she returned to Bermuda in February 2022 and commenced work with the Respondent in March of 2022. However, in the eight (8) months since ending her first period of employment with the Respondent - she was asked if she "blocked the Respondent"? The Complainant replied, yes. She was then asked if there was any discussion about working for the Respondent again, before meeting her at the Shopping Centre? The Complainant did not respond.

45. Counsel asked the Complainant if her salary arrangement (since commencing her employment in March 2022) was commission-based at 40%? The Complainant replied: Yes.

46. Counsel asked the Complainant (numerous times), if, in 2019 during her first period of employment, whether she was paid the monthly salary of \$2000.00, to which the Complainant replied: No.

47. Referring to the Complainant's claim that she had no choice but to accept being deducted for wi-fi and bottled water, and whether she ever complained to the Respondent, the Complainant replied that while she was aware of the deductions, she did not tell the Respondent to stop the deductions.

48. The Complainant agreed that she did not need wi-fi to complete her duties as a therapist; and that she provided her clients with bottled water; not the PURE water or tap water.

49. When asked if at any time in the two years that she worked for the Respondent, whether she complained to the Respondent about working at the , the Complainant gave no response.

50. Referencing the relationship between the Complainant and the Respondent - when asked to confirm if she (previously) vacationed with the Respondent for "Black Friday" shopping, the Complainant replied: Yes.

TESTIMONY OF THE RESPONDENT

51. Counsel for the Respondent asked questions to clarify the Complainant's statement in which she testified that she came in at 7:00 AM daily to begin her cleaning duties. The Respondent stated that she never asked the Complainant to come in at 7:00 AM.

52. The Respondent further stated that, if there were no clients, the Complainant could come and go when she wanted to; that her time was very flexible.

53. Referring to the revised work schedule that was presented to Complainant on 9th August, 2024, the Respondent was asked whether the Complainant asked to have weekends off - as noted in the revised schedule: Days off: Saturday and Sunday. The Respondent replied: Yes.

54. When asked if the Complainant often worked until 9:00PM, the Respondent replied that the Complainant rarely worked late. And, at times she would drive the Complainant to or from work.

55. To refute any notion that the Complainant was not being given clients, the Respondent confirmed that clients were able to choose their own therapist.

56. Because the Complainant testified to not having any discussion with the Respondent when she was presented with the revised work schedule on 9th August, 2024, the Respondent was asked to provide her account of the meeting. She stated that she read the letter to the Complainant three times (so that she could understand the content); she read the letter to the Complainant in English and again in . She said that the Complainant sent a picture of the letter to her husband. The Respondent further stated that she then asked the Complainant if she had any questions. She said the Complainant replied: No; and said it (the letter's content) was okay.

57. The Respondent then asked the Complainant to sign the letter, but the Complainant asked her to sign it first, which she did.

58. In closing, the Respondent said (over the course of the working relationship), she would often ask the Complainant "*what would make her happy*"? But the Complainant would "*clam up*" and not answer. When asked by the Tribunal why she would ask the Complainant that question, the Respondent replied: "*So that she could change the Complainant's schedule*".

59. And, in response to the Complainant's assertion that she believed she had no choice to be deducted for bottled water, the Respondent replied that there would have been no deductions if the Complainant wanted to drink from the PURE water station; only if she opted to have the bottled water.

CROSS EXAMINATION OF THE RESPONDENT

60. The Tribunal directed the Complainant's Representative that questions during cross examination should pertain to the witnesses' testimony directly preceding cross examination. But, although this direction was provided, the Representative proceeded to ask the Respondent how many staff she had working at the time of the Complainant's employment. Regardless, the Respondent answered that she had eight (8) employees.

61. The Respondent was asked if wi-fi was used for her business. She replied that wi-fi was not required for the staff to perform their roles. Wi-Fi was provided as a benefit for them to use in their free time.

62. The Respondent was asked to confirm the amount of the deductions for wi-fi and bottled water that the Complainant was charged. The Respondent replied that the Complainant was charged \$55.00 monthly.

63. The Representative revisited the Complainant's compensation structure, and it was confirmed by the Respondent that the Complainant was commission-based at 40%; The Representative wanted, on record, the Complainant's claim that she never received the monthly \$2000.00 salary from her 2019 contract. Again, the Tribunal reminded the Representative that his line of questioning was improper; the 2019 period of employment was outside the Tribunal's jurisdiction.

64. The Respondent was asked if she ever had conversations about the Complainant with other members of staff. The Respondent replied: No.

64.1 At this point in the Representative's cross examination of the Respondent, he stated to the Tribunal that he had evidence to prove that the preceding answer was untrue. He continued by saying that he was in possession of an audio recording on his phone; the language spoken was Thai. The Representative then asked if he could be allowed to play the recording and have the Complainant or the Respondent interpret the conversation. The Tribunal did not allow the recording to be played.

64.2 At the point in the Hearing in which the request was made, the Representative had already been advised by the Tribunal that he was crossing the line of testifying (on behalf of the Complainant) rather than representing her claims. The Tribunal had exhausted the questioning and answers of both parties as it, 1) regarded their relationship, and, 2) that the Complainant brought no witnesses or verified statements to support her claim that Respondent was speaking

ill of her to other workers, or using bullying, intimidating and persuasive language against her.

64.3 Allowing the Representative to play a recording that had not been transcribed, and without the ability of the Tribunal or Counsel to challenge the authenticity of the participants or allow the participants to corroborate the recording, could have been prejudicial to the Respondent. Lastly, the Tribunal would not request of the Complainant and the Respondent to interpret the conversation from Thai to English, when it had already been established from the outset of the Directions Hearing and the Substantive Hearing, that both parties did not speak or comprehend English, well.

64.4 The Representative was made aware of the instructions from the Directions Hearing - held nine (9) weeks prior to the Substantive Hearing - in which he was informed verbally and in writing that all evidence on which he intended to rely, should be submitted to the Tribunal and the other party - prior to the Substantive Hearing. However, on three separate occasions within the Hearing, the Complainant's Representative not only attempted to introduce new evidence, but to question the Respondent on facts not in evidence.

65. Returning to the cross-examination of the Respondent: she was asked if the other workers come in early to do cleaning? The Respondent replied that other workers would come in at least a half-hour earlier than their first client to do their cleaning.

66. When asked why the Complainant's work schedule of (9th August, 2024) was changed, the Respondent replied that the Complainant told her that she wanted to have weekends off to spend time with her family.

67. Regarding who had authority to schedule clients, the Respondent stated that other staff could schedule appointments, and could do so if the Complainant was not there.

68. Turning to the event of 9th August, 2024, when the Complainant was given the revised work schedule: The Representative asked the Respondent at what time did she hold the meeting and provide the letter; was it at 5:30 PM - after the Complainant had finished with a client? The Respondent replied that she held the meeting at approximately 5:00PM just after the Complainant had finished her last client. She was further asked if she asked the Complainant to take another client. The Respondent replied: No, because the Complainant had left after the meeting.

69. The Respondent was asked why she took keys from the Complainant after both parties signed the revised work schedule presented on 9th August. She confirmed that she had taken the Complainant's keys because they would no longer be needed by the Complainant because of her new work hours. The Complainant would be arriving to work after the was opened and she would finish work before the other staff.

70. Returning to the scheduling of clients, the Respondent was asked her general opinion about the weekends and whether they were busy at the . The Respondent replied that weekends were busy. The Representative's response was: by giving the Complainant weekends off, would have financially disadvantaged the Complainant if she no longer worked on Saturdays.

RE-CROSS OF THE RESPONDENT BY COUNSEL

71. The Respondent was asked if it was true that the Complainant's work schedule already provided her with Sundays as an off day. If so, there would be not much more of a financial impact if she did not work on Saturdays. The Respondent agreed, and reiterated that the Complainant wanted to have weekends off to spend time with her family.

72. Regarding the working relationship of the parties: The Respondent was asked when she noticed the working relationship between the two of them changing. She stated that the Complainant was more unhappy, and the morale in the was changing; that it was not good for the clients. That each time she tried to help the Complainant (to determine what was wrong), the Complainant kept ignoring her. Finally, she stated that the Complainant was not fitting in with the team.

73. The Respondent confirmed that the Complainant did not attend work at her scheduled start time on Monday, 12th August. At approximately 5:00PM the Complainant arrived with her husband and handed back her uniform. The Respondent asked the Complainant if she was coming back to work, and the Complainant responded: "I no longer work for you", and then she left.

CLOSING STATEMENTS

74. Due to the lateness of the hour during the Hearing, the parties were provided the option to recess and return to make oral closing statements, or to adjourn and submit written closing statements at a deadline determined by the Tribunal. The parties agreed to the latter option.

CLOSING STATEMENT OF THE COMPLAINANT

75. The Complainant, through her Representative, asked the Tribunal for a finding of Constructive Dismissal based on the Respondent's conduct during her employment period 5th March, 2022 through 9th August, 2024.

76. The Complainant's emphasis of the Respondent's conduct and contraventions of the Employment Act 2000, as noted in their Closing Statement were as follows:

a. The Respondent did not provide the Complainant with a new, signed, contract of employment; and that she acted arbitrarily from one (former contract) to another, although the former and

current contract were agreed by the parties as "the same".

b. The Respondent "chose to ignore the contract all together and persuade the Complainant to accept a commission-only" basis of employment.

c. The Complainant was not paid for vacation based on the statutory guidelines as outlined in the Employment Act 2000.

d. That the provision of a revised schedule of work to the Complainant, soon after completing a session with a client, and without consultation - to be effective immediately, caused the Complainant undue stress, and was evidence of coercion and bullying. In particular because the Complainant asserted that she (acted/signed) the agreement under duress.

e. That the nature of the parties' working relationship was misrepresented. While there were shared social activities, there was no close, familial relationship with the Complainant.

f. The Respondent's failure to provide clear and detailed pay and benefit contribution receipts, and the alleged failure by the Respondent to pay the pension and tax contributions on behalf of the Complainant.

77. The Respondent's alleged conduct which the Complainant claims supports a constructive dismissal claim - as described by the Complainant in the Closing Statement was characterized as: manipulation; coercion, bullying, exerting undue pressure; making false accusations; communicating disinformation; extortion; administering invalid work practices; contradictory; controlling; neglect; oppressive and creating a hostile work environment.

78. The Complainant seeks relief for constructive dismissal, and further, for wrongful dismissal and damages for emotional distress. Additionally, the Complainant's Closing Statement attempts to advise the Tribunal on fines to be imposed on the Respondent, and seeks again to bring forth compensation that the Complainant alleges is owed under the terms of the 2019/2021 former employment contract.

CLOSING STATEMENT OF THE RESPONDENT

79. The Respondent denies that the Complainant was constructively dismissed and disputes the Complainant's claims related to unpaid vacation and unauthorized deductions. The defence is as follows:

a. The Respondent reminded the Tribunal that constructive dismissal is the central allegation in this matter and that the burden of proof lies squarely with the Complainant. That in proving the Respondent's repudiated conduct - namely conduct so serious that it undermined the very root of the contract of employment between the parties - the Complainant must prove that her resignation was a direct response to the Respondent's conduct - which rendered the continuation of the employment relationship objectively unreasonable.

b. The well established Authorities in Bermuda Law, setting out the threshold for claiming constructive dismissal were listed as: *Western Excavating (ECC) Ltd v Sharp [1978] ICR 221*, and *Interpetrol Bermuda Ltd v Levin, 1986 Civil Appeal No.23*.

c. The Respondent highlighted the three (3) allegations made by the Complainant to support her claim of constructive dismissal, and refuted each:

1. *That the Complainant was cut off from the Spa's wi-fi and access to bottled water.* The Respondent's submission is that once the Complainant asked for deductions to cease, the Respondent complied. That at no point during the Complainant's employment did she raise a complaint about the deductions; and as per her testimony, she accepted the deductions during her first period of employment, and assumed the same terms applied in her second term of employment.

2. *The Respondent intimidated the Complainant.* The Respondent's submission is that there was no credible evidence provided by the Complainant that she was bullied; threatened, or ostracized. No witnesses were called to support the claims, and the Respondent took pride in treating her staff like family.

3. *That the Respondent unfairly reduced the Complainant's client load, including by issuing a letter dated 9th August, 2024, altering the Complainant's work days and hours.* The Respondent's submission asserts that client allocations were determined by therapists availability; that the Complainant's earnings remained consistent to the date of her resignation. The Complainant understood the terms and effects of her schedule change during the meeting of 9th August, 2024. Additionally, the altered work schedule was done in good faith, and any attempt to suggest that the schedule excluded the busiest days at the to impact on the Complainant's earnings, are unfounded.

d. The Respondent acknowledges that she misunderstood Section 12 - Vacation Leave of the Act, and did not pay the Complainant for vacation leave in the current contract 2022/2024. The Respondent asked the Tribunal to recognise that there was an eight (8) months break in service - between the Complainant's first two years and her second two years of employment with the Respondent; as such, eligibility for ten (10) days paid vacation was effective 5th March, 2023. And, the Complainant's vacation pay has (since proceeding to the Substantive Hearing) been recalculated.

e. The Respondent refutes the claim that the Complainant was entitled to extra pay when working on a public holiday. That there was no agreement - expressed or implied - between the parties that such extra payments (for the Complainant, who worked on commission) would be forthcoming; nor were such payments remitted in the two-year tenure of the Complainant.

f. Counsel acknowledged on behalf of the Respondent that she was now aware of the shortcomings in running the . However, since matters had been brought to her attention (through the process of the labour issue), the Respondent has acted quickly to address them.

g. As the sole owner of a small business and with English being the Respondent's second language, navigating the complex language of the Employment Act could be difficult for the Respondent. For these reasons, Counsel for the Respondent asked that the Tribunal exercise its discretion when considering (in light of the efforts by the Respondent to mitigate the business' shortcomings), that a civil penalty would not be appropriate or proportionate in the circumstances; respectfully asking the Tribunal to exercise its discretionary powers to impose civil penalties.

TRIBUNAL CONSIDERATION OF FACTS IN EVIDENCE

A. The Contract of Employment

80. The parties agreed that when the Complainant began working for the Respondent on 5th March, 2024, that she was not issued a new employment contract, but proceeded to work from the initial contract of employment issued to her in 2019 - for her first term of employment with the Respondent. The Complainant testified that after she agreed to reconsider the Respondent's offer to work for her (again) in 2022, that she and her husband (her Representative) attended a meeting with the Respondent to discuss the contract of employment. During that meeting, it was agreed that (while not contrary to the 2019 contract of employment), the Complainant would now actually have two (2) days off, and her tax deductions would be lowered. That all other clauses would remain the same.

81. The Contract of Employment in evidence as presented to the Tribunal was dated 2018. It was signed by the Complainant, but not by the Respondent. The Remuneration clause stated: *"Your salary will be \$2000 (two thousand dollars) per month and will have deductions for Health Insurance, Employment Tax and Social Insurance will be shared"*. However, at some point after the Complainant's initial arrival in Bermuda (in 2019) to commence her employment, she was offered the option of the fixed salary (\$2000 per month) or 40% of the cost of the treatments which she provided to clients. During her testimony, while the Complainant was initially adamant that she did not receive the salary as per the 2019 employment contract, and because the 2022 contract of employment was supposed to be the same, she disagreed that she opted to be commissioned. Later, under cross-examination by Counsel, the Complainant testified that accepting to be commission-based, on both occasions, had been mutually agreed.

82. The Tribunal had to determine if the contradictory testimony by the Complainant was due to a language barrier or an attempt to 1) Continue her claim for the salary as per (both contracts of employment; 2) To make the salary claim for the 4-year term of employment - even though her term of employment was not continuous rather, it was separated by eight months when the Complainant returned to Thailand; having done so with nothing in writing from the Respondent

indicating continued employment on return to Bermuda or otherwise, or 3) To establish that the Respondent chose to ignore certain terms of the contract; in so doing, persuaded the Complainant to accept - not only being commission-based, but to perform other services (i.e. laundry and cleaning), and to accept certain deductions as mandatory, (i.e wi-fi access and bottled water), although not expressed in the contract of employment.

B. Unauthorised Deductions - Wi-Fi and Bottled Water

83. Throughout her employment in performance of the 2019/2021 contract and the 2022/2024 contract, the Complainant availed herself of the Respondent's offer to provide access to the wi-fi and bottled water, at a cost of \$25.00 and \$30.00 per month, respectively. The Respondent testified that both (non essential) benefits were optional, and that the Complainant availed herself of the benefits (and consequently being deducted) in both contracts of employment. Both parties testified that the Complainant knew that the benefit was optional, and the Complainant testified that she agreed to the monthly deductions from her salary.

84. Notwithstanding that the contract dated (2018) showed no clause referencing the Complainant being deducted for wi-fi access and bottled water, the Tribunal had to determine, if at anytime during the Complainant's two terms of employment with the Respondent, whether the Respondent persuaded the Complainant to accept the two benefits, or by any other interpretation - communicated to the Complainant that she had no choice but to pay for wi-fi access and for bottled water.

C. 9th August, 2024 Schedule Change and Reduced Client Load

85. The Complainant testified that at approximately 5:00PM on Friday, 9th August, 2024, after finishing with a client she was presented with a letter from the Respondent. The letter contained updated workdays and times. While the change in the Complainant's schedule was clearly documented and initialized by both parties, the Tribunal had to determine - if as the Complainant asserts - was done so, 1) in retaliation to the Complainant's filed complaint with the Department of Labour, 2) under duress and without consultation or agreement to the change, and 3) whether the change to the Complainant's schedule was a deliberate attempt to limit her clientele.

D. Vacation Entitlement, Overtime Pay, and Compensation for Additional Duties

86. The Complainant is claiming that she is owed for twenty (20) days of paid vacation for the contract period 2022/2024. The Respondent has acknowledged that the Complainant should have been paid for vacation, but does not agree that the Complainant's statutory entitlement is for a total of twenty (20) days paid leave rather, for an accrued ten (10) days in accordance with the Act's Section 12, Vacation Leave. Having determined that the Complainant did complete two (2) years of employment, the Tribunal had to determine if Section 12 had been properly interpreted by either party, to further determine the Complainant's actual paid vacation entitlement for the employment period 2022/2024.

87. With regard to the Complainant's allegations that she was to be paid at time and one-half or double-time when working on public holidays; additionally whether she should have been paid for "cleaning duties", the Tribunal had to determine that, absent any expressed terms in the Complainant's contract of employment, whether there was evidence of an implied duty to "clean" associated with the Complainant's role as a massage therapist. The Tribunal decided it would deal with the issue of overtime pay in strict accordance with the relevant section of the Act - and by the probabilities of the parties making and agreeing to such an arrangement.

E. Constructive Dismissal Claim

88. The Tribunal focused its deliberations on the standard of proof required to not only claim constructive dismissal, but for the Complainant to be successful in that claim. Under Section 38 (c) of the Employment Act 2000, the burden of proof was laid with the Complainant to prove that her resignation was a direct response to conduct by the Respondent; rendering the continuation of the employment relationship to be unreasonable.

89. Thus, the Tribunal would focus its attention on the review of the Complainant's Statement of Claim, the evidence submitted (and that which was claimed to be in evidence), her testimony under direct and redirect examination, and in the absence of witnesses by either party to corroborate or rebut their claims - the relationship history of the parties.

DELIBERATION

90. The Complainant was a work permit holder, initially hired by the Respondent in June 2019, to be a massage therapist. Her one-year work permit was renewed for a further year, and she ended her employment with the Respondent at the end of the second year in June 2021. The Complainant was not terminated, nor was there evidence to indicate that her work permit would not be renewed. To the contrary, the Complainant left the and Bermuda on her own accord because - as she stated: she was unhappy with the "work relationship". Whether the Complainant was expected to return to Bermuda or would continue her employment if she did return, was not evidenced to a degree of certainty by either party. However, there was an eight (8) months span between when the Complainant left for and then later returned to Bermuda. Her testimony indicates that the return to Bermuda was not to continue her employment with the Respondent rather, because she had subsequently become engaged and later married - to her Bermudian husband. The Complainant testified to meeting the Respondent in the Market Place, when she was offered reemployment with the Respondent; agreeing to the offer after hearing that two employees that she (formally) did not get along with, were no longer working for the Respondent. To conclude, the parties agreed that the Complainant's husband accompanied her to the meeting with the Respondent to discuss her new contract terms - deciding that she would have two (2) days off and that her tax deductions would be lowered.

91. What the latter breadth of testimony indicated to the Tribunal was: The Complainant's employment with the Respondent was not continuous. Also, the Complainant was well aware of the environment that she would be working in when she returned to the Respondent's employment. That even though the parties agreed that she was not issued a new statement of employment, it was clear to the Tribunal that enough of a cordial relationship (between the Complainant, her husband and the Respondent) and a consensual working relationship existed between the Complainant and the Respondent for 1) The Complainant to leave on her own accord, and later return and be offered to be reemployed, 2) In spite of the absence of an expressed contract of employment, that there was opportunity to negotiate certain terms within the new contract - which the parties did, and they (continued) to avail themselves of the flexibility that the relationship afforded them, during the 2022/2024 contract of employment.

92. The Complainant testified that as the employment relationship continued, that the Respondent proceeded to turn the other employees against her because she complained about various matters regarding her benefit deductions (i.e. Social Insurance and Payroll Tax being incorrect) and that the Respondent did not provide her with receipts of her pay and deductions. The Complainant did not offer any witnesses to support her claim that the Respondent was speaking ill of her to other workers. In the absence of anyone to corroborate her charge, the Tribunal held its position on the matter in abeyance, until both testimonies were complete.

93. However, to the charge that the Respondent did not provide the Complainant with pay receipts, evidence to the contrary was provided by the Complainant when she supplied the Tribunal with weekly pay receipts (as provided by Respondent) for her 2022/24 contract. The Complainant also did not deny that the Respondent had explained her receipts and acted on any requests to change deductions etc., when such matters were brought to her attention.

94. However, central to the contravention of Section 7 (2), where the Respondent was required to provide itemised pay statements but did not, even though the Respondent testified that she explained all deductions and payments to all of her staff - including the Complainant - the Tribunal reasoned that, notwithstanding that the Act required detailed/itemised statements, the provision of such from the beginning of the employment contract would have allowed the Complainant to be cognizant of her compensation and benefits; to manage them as needed.

95. Ultimately, the Tribunal recognized that the Complainant's lack of ability to self-advocate, led to her husband (and Representative) visiting the Respondent in the workplace, and as testified to - and, often directing the Complainant to have the Respondent address the anomalies with her benefits and deductions. The Tribunal reasoned that more likely than not, the quasi advocacy stances and interventions between the Complainant's husband and the Respondent, was central to causing tension between the Complainant and the Respondent. And, the Tribunal witnessed the Complainant's frustrated and distant demeanor during the questioning of the Respondent by the Complainant's Representative/husband. Never-the-less, testimony by both parties supported the fact that when such (payroll) anomalies were raised, the Respondent acted to correct them.

96. The Tribunal is not immune to the effects on employees when their employer acts contrary to their employment rights. However, it was not made evident to the Tribunal that the Respondent had singled out or managed the Complainant's payroll differently than other workers. To support this position, the Respondent acknowledged that she had acted contrary to the Act in Section 7 (2); now understanding the nature of details to be included in itemized pay statements, and that she was actively working to rectify the future pay statements.

97. NOTE: In the Complainant's Closing Statement, the Tribunal was accused of refusing to accept the Complainant's "book of receipts" which the Representative stated was "offered as evidence". 1) The Complainant's "book of receipts" was not presented as evidence in her bundle. 2) It was offered when the Representative was attempting to include "the book of receipts" while trying to argue hypotheticals and projections on what the Complainant would be due had she been paid a salary versus being commissioned.

98. The Tribunal had continued to remind the Complainant's Representative that its decision would be based on facts. That the Tribunal would not revisit the 2019 contract of which they continued to advance to rebut the accuracy of the pay receipts as presented by the Respondent, as those receipts were calculated on the Complainant being commissioned - when the 2019 contract of employment expressed that she was to be salaried. The 'book of receipts' was rejected because the Complainant had not used their own receipts (in either context) to argue that the Complainant was being improperly deducted and compensated. Rather, they relied on the Respondent's evidence; indeed, they included the Respondent's evidence in their own bundle, and not their own evidence in the form of the "book of receipts".

Unauthorised Deductions for Wi-Fi and Bottled Water

99. Regarding the Complainant's claim that she had no choice to accept the non-essential benefits of wi-fi access and bottled water: She argued that because the arrangement existed during her first term of employment, notwithstanding that other than her days off and tax deductions being lowered - that all other arrangements were the same - the Complainant agreed that having access to wi-fi was not required for her to perform her job, nor was the deduction forced on her. Further, had she asked the Respondent to cease the deduction, that the Respondent would have done so. The Respondent testified that when the Complainant did ask for the deductions to be ceased - in or around August 2024 - that she complied and disabled the Complainant's access.

100. In the similar vein, the Complainant testified that she accepted the benefit of having bottled water while working, because the facility's tank was unclear, and she could not boil her water at work. But, what the Complainant failed to mention, was that, other than tap water as the alternative to bottled water or boiling water, that the also had a PURE water fountain from which the Complainant could have access to water. The Complainant did not disagree with the testimony of the Respondent that no-one was required to be deducted for bottled water, and the Complainant was aware of that fact. Thus, the Tribunal determined that this particular claim of

unauthorised deductions was not only without merit, but that the Complainant was not “cut off” because she filed a complaint with the Labour Relations Office.

101. Because the Complainant asserted that her schedule changes were altered unilaterally and without consultation - thereby subjecting her to undue stress and pressure to accept the changes, the Tribunal reviewed the contract of employment to determine if the Respondent reserved any rights to make such changes. *Clause 2, The Hours*, in the contract of employment states: *‘Your exact schedule is to be negotiated and may vary based upon staffing availability and client needs. Seniority combined with a reasonable sense of individual needs are the considerations given to creating staff schedules’*. Clearly, the Respondent reserved such rights to alter the Complainant’s schedule and within the context provided.

102. The evidence before the Tribunal indicates that on at least two occasions, the Complainant’s days off were changed to favor having at least one weekend day off, and having two consecutive days off. The parties testified that weekends are considered the busiest days in the Spa, yet the Complainant had at least one weekend day off from the beginning of her 2022 contract.

Limiting the Complainant’s Clientele

103. The Tribunal reasoned that the change in the schedule to provide the Complainant with weekends off and with hours reflective of a 9-5 environment appeared to be too specific of a decision to be made by the Respondent - without some discussion with the Complainant. Thus, it agreed that the Respondent’s testimony that the Complainant asked for weekends off to spend more time with her family, was valid. And, the Complainant did not deny that she had asked for the change. During the meeting, the Respondent testified that she read the letter three (3) times to the Complainant; and that she did so in English and Thai. Under cross examination by Counsel, when asked if she understood the terms of the letter, the Complainant responded that she did. After sending a picture of the letter to her husband, the Complainant then asked the Respondent to sign the letter first, after which, her signature followed.

104. While the timing of presenting the letter to the Complainant was not ideal - and could appear to have been done to pressure the Complainant to make a decision at the end of the day, the Tribunal determined that regardless of the timing, neither party testified that accepting the altered work schedule was an ultimatum. In fact, the Respondent testified that had the Complainant not signed the letter, her schedule would have remained the same.

105. To determine if there was merit to the charges that, a) the Complainant was being given less clients since she filed her formal complaint with the Labour Office on 9th July, 2024, and b) that by altering the Complainant’s schedule and providing her with weekends off, the Complainant would be disadvantaged and make less money, the Tribunal accepted the Respondent’s evidence (which was not rebutted or denied by the Complainant) that her earnings were directly tied to the number of clients that she served and if she was available. That therapists could conduct their own scheduling of clients, and at times, clients would request

which therapist they preferred. This testimony amounted to there being a number of factors that might impact on the Complainant's earnings.

106. A review of the Complainant's net earnings (per week) since filing the formal complaint, evidenced that her wages did not shift dramatically. With the exception that the week preceding the Cup Match Holiday and the week after the same holiday, while the Complainant's wages did decrease, her total treatment amounts remained consistent back to the week of April 29th. The week of the Cup Match holiday, her net pay was at its lowest, however, the week after Cup Match, her wages rose again.

107. With the Complainant presenting no documented evidence of the type of treatments she performed, conversely, that her clients were being diverted to other therapists, the Tribunal concluded that neither event, as experienced by the Complainant, had a direct, negative impact on her earnings; specifically because the 9th August schedule change never came into effect due to the Complainant resigning on the 12th of August, 2024.

Vacation Leave

108. There was no testimony from either party regarding the Complainant's charge of not receiving paid vacation from the Respondent. However, both parties made reference to the benefit in their various submissions. In particular: the Complainant's statement that she is owed for four (4) weeks paid vacation for the period of work between 5th March, 2022 and 9th August, 2024, was disputed by the Respondent.

109. The Tribunal agreed with the parties that the Complainant was granted eleven (11) days for vacation during the relevant period of work, but that she was not paid. During pre-hearing discussions - absent of the Tribunal, the Respondent acknowledged and accepted the matter of non-payment, but calculated that the Complainant was only eligible for ten (10) days paid vacation and for the period: 5th March, 2023 through 4th March, 2024 - with any days after that to the point of the Complainant's resignation being pro-rated. And, on 17th September, 2024, the respondent agreed to pay the Complainant upon confirmation and receipt of the Complainant's bank account information.

110. Pursuant to Section 12 - Vacation Leave, 12 (1) An employee shall be entitled to a period of two weeks annual vacation after he has completed - (a) the first year of continuous employment; and (b) each subsequent year of continuous employment. In the Complainant's case, she had two (2) years of continuous employment from 11th March, 2022, to 9th August, 2024. Clause (3) of the same Section requires that employees shall be entitled to a week's wages for each week of his vacation. Therefore, the Complainant is entitled to four (4) weeks/20 days vacation pay.

Overtime Pay and Pay for Additional Duties

111. The Complainant conflated her claim of not being paid overtime when she worked on a public holiday with her claim that she was not paid for public holidays. In the Complainant's Statement of Claim she asserted that an agreement was made between herself and the Respondent to be paid overtime when she worked on a public holiday. The Respondent denied that such an arrangement existed. Instead, stating in her defence, that as the Complainant was commission-based, she was not entitled to additional compensation for work performed on a public holiday.

112. While Part III Time Off - of the Act makes reference to employees being paid for public holidays (which the Tribunal later addresses), clause (6) states: This section shall not apply where the employer and employee agree in writing otherwise. The Tribunal found that there was no evidence presented by either party to support the Complainant's claim that there was an agreement, nor the Respondent's assertion that the Complainant understood there to be no arrangement to be paid overtime when she worked on a public holiday. Moreover, the Complainant experienced 25 public holidays over the two-year period of her employment with the Respondent, and there was no testimony regarding complaints made to the Respondent when she was not paid accordingly. The Tribunal concluded that was because no agreement existed.

113. Finally, the Tribunal found the Complainant's charge of not being paid for cleaning duties to be absurd. Clause 7 Cleanliness - in the Complainant's contract of employment is as follows: *All staff will monitor the Spa at all times, that it is clean and tidy as necessary, including massage rooms, floors, walls and bathrooms.*

Constructive Dismissal

114. Pursuant to Section 29 (1) of the Employment Act 2000, *"An employee is entitled to terminate his contract of employment without notice where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship, having regard to the employee's duties, length of service and circumstances"*.

115. In Bermuda law, the leading case which established the test for constructive dismissal was *Western Excavating (ECC) Ltd v Sharp [1978]*. The case established that the legal threshold for claiming constructive dismissal is high. Under the circumstances of the case, the employee resigned his employment then sued for unfair dismissal; and the question was whether or not he had, in fact, been dismissed. His claim was dismissed. The test applied was whether the employer had breached a fundamental term of the contract - leading to the question of whether the employee had been constructively dismissed. In determining:

a) The Employer must be guilty of conduct which is of a significant breach going to the root of the contract or, conduct which shows that the Employer no longer intends to be bound by one of

the essential terms of the contract.

b) The conduct must be sufficiently serious and the employee must leave soon after the conduct of which he complains occurs or he will be treated as affirming the conduct.

116. Having addressed the Complainant's claims and resolved each, the Tribunal finds that she was not constructively dismissed. Rather, she resigned her employment. The Tribunal determined that the Complainant and the Respondent not only had a previous two-year working-relationship, but also a friendship. Both testified to socializing, travelling and vacationing together; and during the employment relationship, the Complainant was agreeable to occasionally being transported by the Respondent, and enjoyed a relevant amount of flexibility when negotiating terms of her contract - specifically in having her days off adjusted on more than one occasion when she requested such.

117. While both parties accepted that the Complainant commenced work (the second time) without an updated contract, both also used this fact to their advantage. As covered in the Tribunal's deliberations and determination of each claim by the Complainant, the Respondent either moved to address issues with the Complainant's benefit deductions once brought to her attention by the Complainant, or made changes to the Complainant's work schedule at the Complainant's behest.

118. There was no evidence that the Complainant was underpaid or had her earnings disrupted by limiting her clientele. In fact, as a commissioned employee, the Complainant's earnings were dependent on how many clients she scheduled or was willing to service. The evidence did show that the Complainant earned more on weekdays, then on weekends.

119. While the Respondent's ignorance of the application of Itemised Pay Statement, Vacation Pay and Overtime Pay as per the Employment Act 2000 - can not be excused, the Tribunal finds that her actions in not compensating or believing that she should not compensate the Complainant - as claimed - were not deliberate, biased or an attempt to single her out because she filed a complaint with the Labour Office. After the complaint was filed by the Complainant on 9th July, 2024, other than the Respondent ceasing deductions for wi-fi access and bottled water - at the Complainant's request, the Respondent acted in the Complainant's favor by providing her with a revised work schedule that still provided the Complainant with a 40.0 work-week, working 9:00AM to 5:00PM and having weekends off. The schedule change was evidence to the Tribunal that the employer wished to continue the working relationship with the Complainant, in spite of the Complainant's formal complaint.

120. What the Tribunal witnessed in the behaviors and demeanors of both parties, was a breakdown of the relationship between the parties. They both displayed disagreeable tendencies to each other and showed a propensity to argue; and the Respondent displayed the same vexation with the Complainant's Representative - her husband, as he did with her.

daily rate of \$196.72. Total = \$4,524.56

128. Pursuant to Section 11 Public Holidays: The Tribunal finds that there was no written agreement between the parties to not grant the Complainant with public holiday pay. Where an agreement between the parties is absent, an employer shall grant employees a holiday with pay on each holiday falling within any period of employment. In the Complainant's case, that period of employment was 5th March, 2022 through 9th August, 2024.

129. Public Holidays Award: Twenty-five (25) Public Holidays between 5th March, 2022 and 9th August, 2024, at the average daily rate of \$196.72. Total = \$4,918.00

130. Pursuant to Section 29 Constructive Dismissal, the Tribunal finds that the Complainant has not made the case for constructive dismissal. Therefore the claim is denied.

Civil Penalties

131. Pursuant to 44M, Power of the Tribunal to Impose Civil Penalties, (1) Where a person contravenes a provision of the Employment and Labour Code for which a civil penalty is liable to be imposed, the Tribunal may, subject to this section, impose a civil penalty not exceeding \$10,000.00 as the Tribunal considers appropriate for each such contravention.

132. As the Respondent has breached Section 7, Itemised Pay Statement, (2) of the Employment Act, a fine of \$500.00 is imposed. Without the opportunity to view her payments and deductions, the Complainant was unable to take accountability and be aware of her monthly statements; and ultimately, she was unable to self-advocate against any anomalies in her pay.

133. As the Respondent has breached Section 6, Statement of Employment, of the Employment Act, a fine of \$500.00 is imposed. A statement of employment is due to an employee one week after the employee begins employment. The employer shall give to the employee a written statement of employment which shall be signed and dated by the employer and the employee.

134. The fine is imposed because, had the Respondent provided the Complainant with a revised contract of employment, notwithstanding the Complainant's decision to remain employed or resign, the ability to address her conditions of employment or seek redress, may have proceeded differently.

135. The total of **\$1000.00** for the fines (\$500.00 per each breach) shall be paid within sixty (60) days from the date of receipt of the Determination and Award.

136. The total of **\$9,442.56** for breaches to: Vacation Pay and Holiday Pay shall be paid within thirty (30) days from the receipt of the Determination and Award.

121. The Tribunal could also not ignore how often the Complainant became detached during the Hearing. Ultimately, what was witnessed appeared as a clash of personalities of the Complainant and the Respondent, with frustrations being shared by both; such that the Complainant decided to resign her employment rather than continue on with the working relationship.

122. After signing her revised work schedule in the presence of the Respondent on Friday, 9th of August, the Complainant did not return to work on Monday, 12th of August, 2024. Instead, on the same evening, the Complainant arrived with her husband, and returned her uniform. When asked by the Respondent if she would be returning to work, the Complainant answered: "I no longer work for you". To the Tribunal, the resignation of the Complainant was within her right to choose, and she did so.

Decision and Award

123. Pursuant to Section 7 - Itemised Pay Statement, the Tribunal finds that the Respondent failed to provide an itemized pay statement for the period 11th March, 2022 through 9th August, 2024.

124. Pursuant to Section 8 - Unauthorised Deductions, the Tribunal is satisfied that the Complainant was aware of the additional costs associated with the non-essential benefits which fell outside the obligation of the Respondent, and that the Complainant opted to receive each benefit. Therefore the charge against the Respondent is disproved and rejected by the Tribunal.

125. Pursuant to Section 9 - Overtime, the Tribunal does not accept that the Respondent agreed to pay the Complainant overtime pay if/when she worked on a public holiday. The Tribunal is satisfied that the parties did mutually agree that no such pay arrangement existed between the parties. Therefore the charge against the Respondent is disproved and rejected by the Tribunal.


126. Pursuant to Section 12 - Vacation Leave, the Tribunal finds that the Respondent failed to pay the Complainant for the statutory entitlement of twenty-days (20) days vacation. While the Respondent is of the belief that paid leave applies after the first continuous year of employment, clause (1A) is not prejudicial, and notes that an employee who completes six (6) months of continuous employment, is entitled (at that time) to one (1) week's vacation leave. It stands to reason that the Complainant - having met that continuous 6 months term in her first year of employment (2022/2023), and subsequently completed a further 6 months to the end of that first year - was eligible for ten (10) days paid vacation. The Complainant then continued employment from 2023/2024, continuing her eligibility to accrue a further ten (10) days vacation over the course of the two-year contract.

127. Vacation Pay Award: Ten (10) days for March 2022 to March 2023 and ten (10) days from April 2023 to April 2024. And 2.5 days accrued from May 2024 to 9th August, 2024. Average


137. The parties to this Hearing were reminded, and it was acknowledged, that the Determination and Order of this Tribunal are final.

138. It was also made clear that, in accordance with Section 44J and Section 44O of the Employment Act 2000, a party aggrieved by a Determination or Order of the Tribunal, may appeal to the Supreme Court on a point of law.

DATED this Day, 20th August, 2025



Lorrita J. Tucker
Chairman



Peter L. Aldrich
Tribunal Member



Mrs. Betty Christopher
Tribunal Member

