

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

**BETWEEN**

**Terrence Martinez  
Complainant**

**AND**

**Dr.**

**Respondent**

**DETERMINATION & ORDER**

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**Members of Tribunal:**

**Ms. Jocene C. Wade, Chairman  
Mr. Derrick Burgess, Deputy Chairman  
Mrs. Judith Hall-Bean, Member**

**Hearing Date: July 7<sup>th</sup>, 2025**

**Place: Ministry of Economy and Labour  
Department of Workforce Development**

**Physical Address: 23 Parliament Street  
Hamilton HM 12**

**Matter of Dispute: Section 28 (1) (a) Unfair Dismissal**

## **INTRODUCTION:**

A hearing was convened before the Employment and Labour Relations Tribunal to address the complaint of unfair termination brought by Terrence Martinez against

The panel, chaired by Jocene Wade, included Derrick Burgess and Judith Hall-Bean

The Chair asked both parties if they had attempted to resolve the matter prior to the tribunal hearing, and if not, would they be interested in doing so; both parties confirmed **no**.

The Chair emphasized the panel's commitment to reviewing evidence, assessing facts, and applying the Bermuda Employment Law to reach a fair resolution.

## **AUTHORITY TO HEAR MATTER**

The Tribunal Hearing was conducted in accordance with section 44B (2), the General Powers of section 44C, and that the Tribunal shall regulate its own proceedings as it sees fit pursuant to Section 28 of the Employment Act 2000 ("the Act 2000").

## **SUMMARY OF THE COMPLAINANT CASE**

The COMPLAINANT alleges that:-

- I. His employment was terminated unfairly, even after he submitted his resignation letter
- II. The COMPLAINANT relies on Section 28 of the Employment Act 2000, asserting that the dismissal was unfair because he did not receive any written warnings or provided reasons for termination prior to his termination

## PRELIMINARY ARGUMENTS HEARD BY THE TRIBUNAL

1. The COMPLAINANT (Terence Martinez) commenced with \_\_\_\_\_ in the position of **Medical Technologist** from June 27<sup>th</sup>, 2022, until his termination on November 7<sup>th</sup>, 2023.
2. Mr. Martinez confirmed he submitted his resignation letter on October 11, 2023, to \_\_\_\_\_ the Accounts Manager, as the other office personnel were off island.
3. Mr. Martinez confirmed that he was required to give a 60-day notice as per his contract, and his last working day would be **December 5<sup>th</sup>, 2023**.
4. Mr. Martinez stated that he had not yet received either an acknowledgment of his resignation or a follow-up letter from his Employer.
5. Mr. Martinez also confirmed that on several occasions, he left early and was verbally addressed about it, but he never received any written warning regarding this issue.
6. Mr. Martinez reported that he observed \_\_\_\_\_ standing on the crosswalk, staring at him. After crossing the street, \_\_\_\_\_ asked him to follow him to the \_\_\_\_\_. He requested Mr. Martinez's keys and belongings and then led him back across the street to the \_\_\_\_\_ building without providing any explanation, which has raised some concerns about intentions.
7. Both he and I stood in the reception area, in front of patients and two other technologists, \_\_\_\_\_ and \_\_\_\_\_ (written statements of what they observed were provided). I inquired whether he was dismissing me, and he confirmed that he was. I asked about the termination letter, and he stated that \_\_\_\_\_ would send it to you. However, to date, I have not received any such document.
8. Mr. Martinez expressed that he was deeply embarrassed and believed he was unfairly treated, as no reasons were provided for his dismissal without notice. He stated that there had been no prior discussions regarding potential violations, nor had he received any verbal or written warnings concerning his performance or attendance. He also recalled that he had not undergone a yearly performance evaluation. Additionally, he mentioned that he was called into the office to discuss new terms of employment after his initial contract expired on **June 30<sup>th</sup>, 2023**.
9. Since he was no longer under contract, Mr. Martinez did not sign or agree to the proposed new conditions. He also stated that he contacted the Labour Department and spoke with Mr. Kenny Bartram to raise concerns about the manner in which he was treated.

## RESPONDENT (

10.                    reported that he saw Mr. Martinez on the sidewalk. When I asked Mr. Martinez whether he had keys to the building, he confirmed that he did. I then directed him to the laboratory, requested the key, and instructed him to take his helmet and jacket. I                    stated that he planned for                    , the office manager, to prepare the termination letter, which Mr. Martinez has not received.
11. Mr. Martinez prioritizes his role as lead saxophonist and prefers to focus on performing. It is evident that he leaves work early without notifying the                    director or making formal requests to leave early. There have been occasions when lab services were needed late in the afternoon for patient care, yet he left early, believing that his work was complete. However, this is not the case, as I am still attending to patients. He is still expected to assist patients.
12. Mr. Martinez responded dismissively to                    telling him to leave his 'saxophone out of this,' and exhibited disrespect towards me in front of staff in my capacity as his employer.
13.                    stated that Mr. Martinez blatantly disregarded his own agreement by resigning on October 11, 2023; however, he was still expected to adhere to his scheduled working hours. Ms.                    and I met with him to discuss his employment agreement, and he advised that he would be seeking legal advice.

## STATEMENT OF WITNESSES

14. Ms.                    , the Office Manager, confirmed that on October 13, 2023,                    returned to the island and was in the office in the afternoon. A patient encountered                    in the blood drawing area, as they were there to provide lab samples, and no staff were present. Mr. Martinez, who was working in that section, clocked out at 11:56 a.m. and did not return for the remainder of the day; no message or explanation for his early departure was received.
15.                    confirmed her involvement in the hiring process and the initial interviews. She also discussed her acknowledgment of Mr. Martinez's resignation and the subsequent follow-up emails.

16. Ms. \_\_\_\_\_, the Accounts Manager, explained the payroll process and the method of tracking hours and referenced WhatsApp messages from Mr. Martinez regarding incidents of forgetting to clock in.

### **Key Issues:**

The primary issues before the Tribunal were:

17. The circumstances surrounding Mr. Martinez's termination include the absence of a formal termination letter and a lack of clear, communicated reasons for his dismissal.
18. The fairness of the termination and its compliance with Bermuda employment law are in question, particularly considering the fact that the Complainant resigned and provided the relevant notice period.
19. It is also relevant to assess whether the employer adhered to proper procedures concerning Complainant contracts, notice periods, and the process of terminating employment.
20. Unlawful Withholding of Pay -The employer indicated a two-week pay withholding practice, which is non-compliant with the Act, unless agreed in writing and consistent with the Bermuda Employment Act 2000.
21. Conflicting Grounds for Termination – The termination was justified verbally on the grounds of a breach of the schedule. However, an overseas technical consultant, Ms. \_\_\_\_\_ advised \_\_\_\_\_ to dismiss Mr. Martinez for insubordination, creating inconsistencies in the stated cause for termination.
22. Holiday Entitlement Practices - The Tribunal observed inconsistencies between \_\_\_\_\_ practices regarding holiday entitlements and Bermuda law. Specifically, the observance of U.S. holidays and related pay conditions was noted. The Tribunal further observed that the \_\_\_\_\_ Employee Manual lacks clear documentation of these practices.

### **Legal Principles**

The Tribunal considered the following aspects of Bermuda employment law:

23. The requirement for a written statement of employment outlining the terms and conditions of employment as described in Section 6 of the Employment Act.

24. The rights of employees and employers concerning termination of employment, including notice periods and reasons for termination.
25. The importance of following fair and transparent procedures in all employment-related matters, including disciplinary actions and terminations.
26. The statutory framework is set out in the Employment Act 2000, which provides relevantly as follows:

**27. 'Unfair Dismissal'**

- (1) The following do not constitute valid reasons for dismissal or the imposition of disciplinary action -*
- i. an employee race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, disability or marital status...*
  - ii. (b) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of this Act;*
  - iii. (c) the making of a protected disclosure under section 29A.*

*(2) The dismissal of an employee is unfair if it is based on any of the grounds listed in subsection*

*'In any claim arising out of the dismissal of an employee, it shall be for the employer to prove the reason for the dismissal, and if he fails to do so there shall be a conclusive presumption that the dismissal was unfair.*

**THE ORDER**

The Tribunal finds that : unlawfully terminated Mr. Martinez without any valid grounds after he had already submitted his resignation, in violation of the Bermuda Employment Act 2000.

The termination was carried out without due process or proper justification, as no grounds were provided in accordance with the provisions outlined in the Act. There was no formal termination letter, and the reasons given were unclear, constituting a constructive/unfair dismissal under Bermuda law.

Based on the evidence presented, the Tribunal submits the following findings and recommendations:

Notice and Termination Compliance: The Employee Handbook mandates a sixty (60) day notice period for employees wishing to cease employment. Mr. Martinez adhered to this policy by providing the required notice.

However, he was terminated on the 24th day of the notice period, which is premature and breaches the employment policy. Consequently, Mr. Martinez is entitled to pay for the remaining 36 days of notice.

**Calculations are as follows:**

Daily rate: BMD \$43.00 x 8 hours = BMD \$344.00 per day - payment for 36 days: BMD \$344.00 x 36 = BMD \$12,384.00

**Withheld Pay**-Two (2) weeks' pay, which was withheld at the commencement of Mr. Martinez's employment, must be paid to him. Calculation: **BMD \$43.00 x 8 hours x 10 days = BMD \$3,440.00**

*The Tribunal finds that Mr. Martinez's resignation was followed by a subsequent termination, which contravenes the principles of fair dismissal enshrined within the Employment Act.*

Accordingly, the Employer is hereby directed to pay Mr. Martinez the sum of **BMD\$12,834.00**. This amount comprises compensation for the Employer's breach of notice provisions and damages reflecting lost wages from the date of the unlawful termination until the conclusion of Mr. Martinez's originally intended resignation period. This sum is calculated as **BMD\$3440.00** per day over a period of 36 days.

The Complainant's lack of a current and active employment contract constitutes a violation of the Bermuda Employment Act 2000 by the Employer. Specifically, this contravenes the requirement for a written employment contract as stipulated in Section 6. Consequently, in accordance with Section 6 and subsection (g) thereof, a penalty of BMD\$1,000.00 is levied against the Employer for non-compliance.

**Summary of Compensation Due to Mr. Martinez:**

- Payment for the remaining 36 days | **BMD \$12,384.00**
- Withholding pay at start of employment | **BMD \$3,440.00**

**Civil Penalty:** The Employer is in violation of Section 6, subsection (g) of the Employment Act. Therefore, with the provision of **Section 44M**, which states:

*(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 as the Tribunal considers appropriate for each such contravention.*

➤ As a result, a penalty of **BMD\$1000.00** is imposed.

The Tribunal's decision is binding and under Section 44O of the Employment Act 2000, either party may appeal to the Supreme Court on a point of law within 21 days.

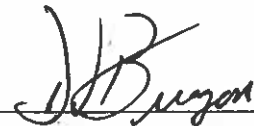
**Dated this 20th day of August 2025.**

Prepared by:



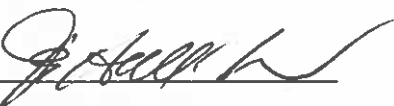
Jocene C. Wade, JP, FCIPD, FCMJ

Chairman



Dereck Burgess

Deputy Chairman



Judith Hall Bean

Tribunal Member