

Introduction and Overview:

1. All of the Complainants are expatriate workers. Two of the Complainants have been employed by the Respondent for more than ten (10) years, whilst the remaining three (3) workers were employed for less than two (2) years.
2. The Complainants' complaint was processed in July 2021 without successful conciliation and entered the Employment Tribunal process in August 2021. Initially, the Respondent and their first representative were seen as not responsive or respectful of the Employment Tribunal procedure. This led to delay and obstacles to a prompt address by the Employment Tribunal. Subsequent legal representation was more attentive and participative but needed extra time to become familiarized with the particulars. This caused more delay. The Employment Tribunal took the unusual step of calling a preliminary hearing using the WebEx platform to become fully seized of the matter and to secure preliminary understandings and particulars. This preliminary hearing was used as a directions hearing. The matter was finally heard by the Employment Tribunal at a full hearing on 13th December 2021 (Hearing).
3. It is noted that throughout the Respondent claimed to be appreciative of and sensitive to the position of the Complainants and wished to do 'the right thing'. Consequently, the Employment Tribunal urged the parties to therefore attempt such deliberations and exchanges as appropriate to a speedy and proper conciliation of issues. By the time the Hearing was held, substantial conciliation on the issues had been secured between the parties.

Terms of Reference:

4. The Complainants claim constructive dismissal pursuant to section 29 of the Act.
5. The Complainants further claim that the Respondent breached sections 8 and 39 of the Act by making unauthorised deductions from their wages.
6. The Complainants further claim that the Respondent failed to pay them overtime in breach of section 9 and 39 of the Act.

Proceedings and Evidence:

7. Prior to the sitting of the Employment Tribunal the Complainants and the Respondent were engaged in without prejudice correspondence in an attempt to settle the dispute at hand. By the date of the Hearing it was the Employment Tribunal's understanding that there was only a limited amount of matters that remained outstanding in dispute for its determination.
8. The Complainants' representative submitted: (i) comprehensive evidence for each complainant denoting the process by which they were 'constructively dismissed'; (ii) calculations and such evidence as was supportive of their wage claims and overtime claims; and (iii) evidence of their extensive negotiations/exchanges with the Respondent during their employment to address the issues.

9. These and other supporting materials were provided to the Employment Tribunal in a hearing bundle of documents prior to the hearing date (**Complainants' Hearing Bundle**). A claims spreadsheet dated 13 December 2021 (**Spreadsheet**) was added later to 'update' the re-imbursements made to all Complainants by the Respondent.
10. The Respondent submitted a somewhat disjointed evidence binder which lacked labelling and directive instructions which would allow easy understanding. There was a lack of evidence to refute any of the claims or assertions of the Complainants. In fact, the Respondent's representative had acknowledged verbally and in writing to the Employment Tribunal throughout that he did not dispute the claims but only had possible issues with their 'accuracy'. He had however, no consistent record keeping or validation of his 'asserted values' for any matter he would contest.
11. At the beginning of the Hearing the Chairman provided the parties with the opportunity to provide the Employment Tribunal with an update regarding the matters remaining in dispute for determination by the Employment Tribunal.
12. The Respondent's representative confirmed to the Employment Tribunal that his client conceded to the Complainants' claim for constructive dismissal. The Complainants' representative circulated the Spreadsheet amongst the parties outlining the matters and figures/calculations which remained in dispute, namely, the figures claimed for: (i) unauthorised deductions of wages; (ii) constructive dismissal; and (iii) overtime. confirmed that his client the Respondent confirmed agreement to the figures/calculations provided for constructive dismissal but that the figures/calculations provided for unauthorised deductions of wages and overtime remained in dispute. A small area of dispute remained for calculated figures for .
13. The Employment Tribunal allowed the parties a short recess to reconsider their positions. Subsequently, the Respondent's representative confirmed to the Tribunal that the Respondent will agree and accept to owing all of the figures/calculations provided in the Spreadsheet. noted that the Respondent was prepared to accept and agree to paying all of the figures/calculations set out in the Spreadsheet if the Respondent was provided with the required time to make such payments namely between 90 and 120 days. He proposed a payment plan whereby 25% of the claim (\$15,000) will be paid in January 2022 with the remainder to be paid by the end of March/April (i.e. 3 – 4 months).
14. The Complainants' representative noted that the Complainants would be first in line as creditors pending any liquidation/winding up of the Respondent who owns approximately in land. He noted that this process has continued for a substantial amount of time with his clients have also incurred legal and other costs while waiting to receive payment. said that a standard costs order is for 21 days or 30 days and that at the very latest his clients would be willing to accept payment by 12 January 2022.

Deliberation:

15. The Employment Tribunal has examined the documentary evidence provided in the Complainants' Hearing Bundle and the content of a Hearing bundle of documents provided by the Respondent (even though never referred to by the Respondent or the Respondent's representative during the Hearing) and has reviewed the oral presentations made at the Hearing.
16. The Respondent's representative confirmed that he accepts and agrees to making payment of the figures/calculations provided by the Complainants and set out in the Spreadsheet and that the matters before the Employment Tribunal were no longer in dispute. The only matter remaining to be determined by the Employment Tribunal was the date of payment by the Respondent to the Complainants.

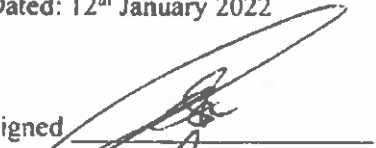
Determination and Order

17. It is the Determination of this Employment Tribunal that:
 - a. The Respondent shall pay the respective Complainants' the figures/calculations provided to the Employment Tribunal as set out in the Spreadsheet and provided in Schedule 1 hereto; and
 - b. The Respondent shall make such payment as soon as possible to the respective Complainants and in any event no later than the 14th January 2022. This date of 14th January 2022 reasonably meets the various requirements of the parties for their current circumstances and ongoing events that are relevant to the matter.
18. The parties to this Hearing have acknowledged that the Determination and Order of this Tribunal are final and binding. Any party aggrieved may however appeal to the Supreme Court of Bermuda on a point of law.

(REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

Dated: 12th January 2022

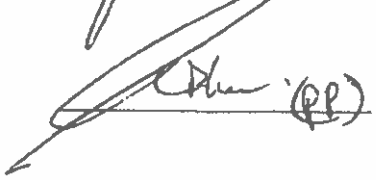
Signed



Dr. Michael Bradshaw (Chair)



Ms. Cheri Minors



Ms. Yolanda Outerbridge

Schedule I

Pursuant to the Decision of the Employment and Labour Relations Tribunal

In the matter

12th January 2022

Complainants					
Commencement Date of Employment	May 2007	March 2010	28 February 2020	19 September 2020	22 December 2019
Unauthorised Deductions of Wages – Sections 8 & 39	\$0	\$815.77	\$1,280.04	\$189.44 + \$548.07 + \$1,128.96	\$4,849.46
Constructive Dismissal – Sections 29 & 40	\$19,328.88	\$18,819.28	\$1,845.68	\$2,080.88	\$1,845.68
Overtime- Sections 9 & 39	\$127.29	\$1,387.50	\$720	\$684	\$2,464