

**THE EMPLOYMENT & LABOUR RELATIONS TRIBUNAL HEARING  
BETWEEN**

**JOVICA MISLJEN**

**(Complainant)**

**AND**

**(Respondent)**

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**Members of Tribunal**

Edward Ball Jr, JP, LLB, FCMI Chairman  
Derrick Burgess, JP, MP, Deputy Chairman

**Date:**

June 13th, 2022 at 11:15 a.m.

**Place:**

Department of Workforce Development

**Matter of Dispute**

**Employment Act 2000 as amended**

Section 44C - General Powers  
Section 44D - Power to obtain Information  
Section 44L - Non-Compliance with Award  
Section 44M - Power of the Tribunal to impose  
civil penalties.

**Complainant:**

**Jovica Misljen**

**Respondent:**

**Representative for the Respondent:**

## **Statutory Powers to hear the Case**

1. Pursuant to Section 44C(1) EAA General Powers:

*(1) Without prejudice to any other powers conferred upon it under the Employment and Labour Code, the Tribunal may—*

- a. proceed to hear and determine any matter in the absence of any party who has been duly summoned to appear before the Tribunal and has failed to do so;*
- b. generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of a matter before the Tribunal....*

2. The Tribunal also exercised its right under Schedule 2(20)

*20 Save as otherwise provided by any provision of this Act or in regulations made by the Minister regulating the procedure to be followed by the Tribunal, the Tribunal shall regulate its own proceedings as it thinks fit.*

## **Background**

3. On March 24<sup>th</sup>, 2022, the Employment Labour Relations Tribunal awarded the Complainant, former xxxxx senior hair stylist xxxxx, the following financial award against his former employer, Respondent xxxxx and xxxxx:

- (a) Thirty five (35) weeks at        BM dollars per week
- (b) Seven (7) statutory Public Holidays
- (c) The difference between the payment of 30% commission
  - i. as compared to the 35% commission in the DoI WP for eleven (11) months
- (d) Minus the Difference of the Contributory Social Insurance

Total sum of the award (BM dollars) to xxxxx

- 4. The Respondent had not paid the Determination Award in full to the Complainant/Aggrieved Person.
- 5. xxxxx did not agree either orally or in writing, to a payment contract with the Respondent within thirty days (30) of the Award date.
- 6. Acting on instructions from the Tribunal Chairman, a letter was sent via email on May 19<sup>th</sup>, 2022 to the Respondent's representative, xxxxx and copied to the members of the Tribunal and the Complainant/Aggrieved Person. The

letter set out xxxxx complaint that xxxxx had not complied with the Tribunal's Determination Award of March 24<sup>th</sup>, 2022.

7. In the same letter, the Tribunal, in exercising its power to obtain information under Section 44D(1)(a – b), instructed xxxxx to furnish:
  - An explanation of the reason(s) for non-compliance with the Determination Award;
  - Financial records and supporting documentation to evaluate the Respondent's ability to pay the Award.
8. The Tribunal set the deadline of May 26<sup>th</sup>, 2022 for xxxxx to submit the requested information. xxxxx did not comply with the Tribunal's Section 44D Order.
9. xxxxx wrote an email on June 9<sup>th</sup>, 2022 10: 47 a.m. to the Tribunal Administrator, inquiring if the Officer was aware why xxxxx did not accept BM dollar per week proposal.
10. In a response email dated June 10<sup>th</sup>, 2022 at 9:01 a.m., to xxxxx June 9<sup>th</sup>, 2022 email, the Tribunal Administrator answered no. June 10<sup>th</sup>, email that the Tribunal instructed xxxxx to attend a Tribunal Hearing in the Department of Workforce Development on Monday, June 13<sup>th</sup>, 2022 at 11:15 a.m.

#### **The Complainant's/Aggrieved Person case**

11. On May 3<sup>rd</sup>, 2022, xxxxx noted that a lump sum of BM dollars was transferred into his HSBC account, number xxxxx, from the Respondent's HSBC checking account xxxxx. The sum represented two (2) payments of BM dollars for April 22<sup>nd</sup>, 2022 and April 29<sup>th</sup>, 2022.
12. In an email trail on April 29<sup>th</sup>, 2022 at 14: 12 p.m. to the Tribunal Administrator, xxxxx further wrote:

*"We had 30 days from the decision to come up with an agreement and this was not possible even though I provided a reasonable payment schedule offer."*
13. xxxxx further asked the Tribunal Administrator in the same email:

*"Please could you let me know next steps as I believe this to be a deliberate action to exasperate this situation and I don't want to be receiving inconsistent payments from xxxxx and xxxxx as and when he pleases".*
14. At 3:04 pm via a return email that same day of April 29<sup>th</sup>, 2022 to the Tribunal Administrator, xxxxx emphasized that he is a guest worker with "no

permanency" in Bermuda and that he cannot accept an offer that would take four (4) years to be paid the money that he is owed.

15. The Complainant/Aggrieved Person further submitted a request to the Tribunal Administrator in the same 3:04 pm email, for the Tribunal to be convened as stipulated in Section 44L Non-Compliance with the Award of the Employment Act 2000 as amended ("EAA") to hear his arguments for the non-payment of the Determination Award by the Respondent.

#### **Respondent's case**

16. As noted in paragraph 7 above, acting on instructions from the Tribunal Chairman, a letter was sent to xxxxx on May 19<sup>th</sup>, 2022 where the Tribunal requested the Respondent to provide:

- (i) An explanation of the reason(s) for non-compliance with the determination;
- (ii) Financial records and supporting documentation to evaluate affordability.

17. On June 9<sup>th</sup>, 2022, at 10:47 a.m., an email was sent to the Tribunal Administrator from xxxxx, where the Respondent attached a screen shot of all the payments deposited to xxxxx HSBC Bank Account.

18. The screenshot revealed the transfer of eight (8) xxxxx HSBC payments of totaling BM dollars to the HSBC account of xxxxx.

19. xxxxx email also revealed that if and when he was able to increase the amount he would do so.

**xxxxx was a "no show" before the Tribunal on June 13<sup>th</sup>, 2022 at 11:15 a.m.**

20. In an effort to afford xxxxx every opportunity to appear before the Tribunal and present his case, the Chairman asked the Tribunal Administrator to call the Respondent and ask if he intended to attend the Hearing as xxxxx was present.

21. At approximately 11:35 a.m. on June 13<sup>th</sup>, 2022, the Tribunal Administrator, placed a call to xxxxx, who answered and verbally informed the Tribunal Administrator that he will not be attending, and will not furnish the Tribunal with any financial information.

22. At 11:40 a.m., the Chairman of the Tribunal asked the Tribunal Administrator, to send an email to xxxxx with a written summary of the Respondent's "oral responses" to the Tribunal Administrator's oral questions at 11:35 a.m. via a telephone call which stated:

- a) **The Tribunal Administrator:** *I asked whether you intended to attend in person ?  
xxxxx response: which you stated was not possible due to just returning to Bermuda and health protocols;*
- b) **The Tribunal Administrator:** *I asked whether you would like to attend via telephone,  
xxxxx response: which you stated: "You did not see the point, as you have confirmed the amount you can afford to pay";*
- c) **The Tribunal Administrator:** *I received confirmation that you are not willing to supply financial records;*
- d) **The Tribunal Administrator:** *I received confirmation that you understand that further steps may be taken by xxxxx.  
xxxxx response: I also received confirmation from you that the / weekly is all you can afford to pay.*

23. At the time of writing the Tribunal's Decision, xxxxx had not responded by confirming or denying:

- a) the June 13<sup>th</sup>, 2022, 11:35 a.m. telephone conversation with Tribunal Administrator or;
- b) sent any amendment and/or, corrections in writing to the Tribunal Administrator's email, concerning the Respondent's account of the June 13<sup>th</sup>, 2022 telephone conversation between the two (2) men.

#### **Deliberations by the Tribunal**

24. with regard to the Respondent not paying the March 24<sup>th</sup>, 2022 Determination Award in full, the Tribunal noted that:

- a. There was no written contract for a payment schedule within 30 days of the Determination Award date between xxxxx and xxxxx where the parties agreed that the Respondent would deposit, into the Complainant's HSBC account, the sum of 3M dollars, that commenced on April 22<sup>nd</sup>, 2022 and on every Friday thereafter, to draw down the Determination Award sum of against the Respondent.
- b. Pursuant to Section 44L(2)(b) the Tribunal observed that the Respondent may be ordered to pay the Complainant / the Aggrieved Person, a general award as it sees fit.

- c. The Tribunal also discerned that the Complainant/ the Aggrieved Person can proceed with a civil debt writ against the Respondent for non-compliance with the March 24<sup>th</sup>, 2022 Determination Order, if the sum of BM dollar was not paid in full within 30 days.
- d. The Complainant/ the Aggrieved Person does have the option to return the sum of BM dollars plus any further deposits into the xxxxx HSBC account by the Respondent xxxxx;
- e. The Tribunal took guidance from Section 44D(2) *Power to obtain information* noting that:

*Any person who –*

- (a) fails without reasonable excuse to furnish particulars in compliance with a requirement under Subsection (1);*
- (b) fails without reasonable excuse to attend before the Tribunal in compliance with such a requirement...*

*shall be liable to a civil penalty as may be imposed by the Tribunal.*

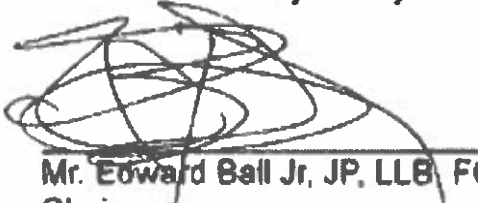
- 25. As stipulated under Section 44M(1) a civil penalty may be made against the Respondent and payable to the Accountant General, based on the Respondent's non-compliance under Section 44D.
- 26. Please note that the Respondent has the right to make representations to the Tribunal within seven (7) days of the receipt of this Order, setting out his views on the civil penalty imposed as noted in section 25 above.
- 27. Pursuant to Section 44O of the Act, the Respondent may appeal on a point of law.

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**Tribunal Determination Order**

28. The Respondent to pay the Complainant/Aggrieved person the sum of BM dollars.
29. The Respondent to pay the Civil Penalty sum of \$3000.00 BM dollars to the Accountant General.
30. Pursuant to Section 44(M)(5) of the Act, if the Respondent does not make representations to the Tribunal, as noted above at Section 26, and does not appeal the Order of the Tribunal, as noted in Section 27 above, he shall within 21 days, pay the civil penalty amount in full or pay a portion and apply to the Labour Relations Manager for a payment schedule for the remainder.
31. The Tribunal makes no further Determination in this matter.

**Dated this 4th day of July 2022**



Mr. Edward Ball Jr, JP, LLB, FCMJ  
Chairman



The Honorable Derrick V. Burgess, JP, MP  
Deputy Chairman