

**IN THE MATTER OF A COMPLAINT UNDER THE TRADE UNION AND  
LABOUR RELATIONS (CONSOLIDATION) ACT 2021 BEFORE THE  
EMPLOYMENT & LABOUR RELATIONS TRIBUNAL (the “Tribunal”)**

**BETWEEN:**

**UNION  
(ON BEHALF OF EMPLOYEE)**

**Claimant**

**AND**

**EMPLOYER**

**Respondent**

---

**DECISION**

---

**A. THE PARTIES**

1. The Claimant in these proceedings is the employee (the **Claimant** or the **Employee**). The Claimant was represented by .
2. The Respondent in these proceedings is the Employer (**Respondent** or the **Employer**). The Respondent was represented by .

**B. PROCEDURAL BACKGROUND**

3. The Claimant filed a complaint under the Trade Union and Labour Relations (Consolidation) Act 2021 (the “**Act**”) under Section 66 (2) (b) that the employment of a member was wrongfully terminated (the “**Referral**”). The Claimant’s Statement of Claim is undated (the “**Statement of Claim**”) and the Respondent’s Defence is dated 14<sup>th</sup> March 2022 (the “**Statement**”). The Claimant did not file any Reply to the Defence although she had the right to do so pursuant to the Directions Order in this matter dated 28<sup>th</sup> January 2022.

4. The Hearing of this matter took place at the Department of Workforce Development on Friday, 15<sup>th</sup> July 2022.
5. The purpose of the Hearing was to determine whether the decision to dismiss the Claimant was correct, and whether the dismissal should be upheld, overturned, or replaced with another sanction.
6. The conclusions reached at the Hearing as well as the evidence on which those conclusions were based would be fully explained.
7. The Tribunal agreed that, following the presentation of the first witness, would be allowed to remain in the Hearing to assist with the presentation of the Respondent's case.

### **C. BACKGROUND**

The agreed facts are as follows:

8. The Claimant and the Respondent agreed that the Claimant was employed as a from 1<sup>st</sup> January 2016 until 17<sup>th</sup> April 2021 prior to her services being terminated. The Claimant's Statement of Employment was signed on 4<sup>th</sup> January 2016.
9. The Claimant is seeking reinstatement and compensation for the period she has been out of work from 17<sup>th</sup> April 2021, and to not suffer any loss of pay, seniority or privileges which she would have enjoyed if she had not been dismissed.
10. The Respondent disputes the Claimant's claims for reinstatement and compensation for the period that she had been out of work since 17<sup>th</sup> April 2021.

### **D. THE CLAIMANT AND RESPONDENT'S POSITIONS**

11. Both the Respondent and Claimant's positions is that on 16<sup>th</sup> April 2021 the Claimant was accused of removing a table from the Respondent without permission, and on 17<sup>th</sup> April 2021 her employment was terminated.
12. The Respondent's position is that the Claimant had removed the table and that the claims which have been made by the Claimant were partially correct.

13. The Respondent also indicated the intention to call witnesses to confirm what happened when the Claimant was seen leaving the Respondent with a table.

14. The Claimant's position is that she had received permission from [redacted] to borrow one of her tables for the use of her daughter who was working from home, but after being confronted by [redacted] she left without the table. When she returned to work the next morning, 17<sup>th</sup> April 2021, she was presented with a letter of termination.

15. The Respondent confirmed that the Claimant's employment had been terminated on 17<sup>th</sup> April 2021 for removing a table without permission, which was a serious offence. Further, it was the Respondent's position that this was not the first incident of the Claimant removing an item without permission.

#### **E. PRESENTATION OF CLAIMANTS CASE**

16. The Claimant's Statement of Claim summarized the Claimant's position as follows:

- The Claimant claimed that she was dismissed from her position as [redacted].
- The Claimant's claim is for reinstatement, and compensation for the period that she had been out of work since 17<sup>th</sup> April 2021 and not to suffer any loss of pay, seniority, or privileges which she would have enjoyed if she had not been dismissed.
- The Complaint's position was that the Respondent did not provide a general notice informing all employees that the policy with respect to the removal of any items from the Respondent had changed, and that employees were not allowed to borrow items without permission.
- The Complaint's position is that the change to the policy could have been discussed in JCC Meetings, but that this did not happen.
- The Claimant presented the following witnesses who were either present at the Hearing or had supplied witness statements:

**– In-Person – Did not submit a written statement:**

- did confirm that she had given the Claimant permission to borrow the table.
- confirmed that the tables belonged to her as she purchased them out of her own funds and brought them to the Respondent's place of business so can use them but at all times they belonged to her and were labelled with her name and that she had donated various items to the Respondent, which includes several tables and other furnishings.
- confirmed that the staff would be allowed to remove items from the Respondent, but because the items were needed every day, the staff were required to commit to bringing them back, so long as she knew where they were she had no problem lending them to staff as was customary.

**– Witness Statement Only:**

- testified that both she and had received permission from to use anything that belonged to her at Respondent.

**– Letter dated 22<sup>nd</sup> June 2021 Only:**

- confirmed that had purchased several items for the Respondent including four tables.

**F. PRESENTATION OF RESPONDENTS CASE**

17. The Respondent disputed the Claimant's claim for reinstatement, and compensation for the period that she had been out of work since 17<sup>th</sup> April 2021 and not to suffer any loss of pay, seniority, or privileges which she would have enjoyed if she had not been dismissed.
18. The Respondent informed the Tribunal that all employees had been informed that nothing was to be removed without permission and that these instructions could be confirmed in minutes of staff meetings.
19. The Respondent presented the following witnesses who were either present or had supplied witness statements at Hearing as follows:

**-In Person:**

- informed the Tribunal that in November 2020, had removed chairs from the Respondent without permission, and that at that time was told not to take anything else without permission.
- also informed the Tribunal that she had witnessed attempt to remove a table from Respondent on 16<sup>th</sup> April 2021, and that when she asked her why she was removing it, her response was that she was taking the table off the premises because her daughter needed to use it.
- stated that had not asked for permission to remove the table; therefore, it was her view that she could no longer trust her to follow instructions.
- referring the Tribunal's attention to Section 25 of the Employment Act 2000 in respect to Summary Dismissal, stated that she considered actions with respect to the removal of the table without permission to have amounted to serious misconduct, and after considering the matter, concluded that services should be terminated in accordance with Section 25 of the Employment Act.
- presented a copy of the termination letter dated 17<sup>th</sup> April 2021 which had been presented to the Claimant.

**— In Person:**

- confirmed that in 2020 she had witnessed a meeting between and during which allegations had been made that had removed three chairs from the Respondent which she stated belonged to her.
- also confirmed that at the end of the meeting had been told that she was not permitted to take anything from the Respondent without management's permission to do so.

**— In Person:**

- testified in relation to the removal of chairs in 2020, that she had personally informed the Claimant that she was not to take any items from the Respondent's place of business without permission, and that on 16<sup>th</sup>

April 2021 had blatantly disregarded instructions not to remove anything without permission, and that since the previous incident in 2020 when had been informed not to take anything from the Respondent without permission, she supported her termination.

- confirmed that she was not stationed in the same building as the Respondent on the 16<sup>th</sup> April 2021 and therefore did not witness attempt to remove the table, and she confirmed that she did not know to whom the table belonged.

20. The Respondent asked the Tribunal to uphold the Claimant's termination after Hearing all the evidence and information.

### **G. TRIBUNAL DELIBERATIONS**

21. The Tribunal considers that during the meeting in November 2020 after the Claimant removed chairs from the Respondent was not a disciplinary Hearing. Neither was the meeting when employment was terminated disciplinary. The Claimant had not been represented at either meeting which is key when dealing with disciplinary issues of this magnitude. The Respondent did not follow Article 21 of the CBA regarding progressive discipline in November 2020 or April 2021.

22. The Tribunal accepts that the Claimant's position is that she had received permission from to borrow the table.


23. The Tribunal accepts that the Respondent's position is that the Claimant knew that the Respondent used the tables and that employees should not remove items without permission. The Respondent confirmed that had come to her to ask she knew the answer would have been "No".


**(THE REMAINDER OF THIS PAGE IS INTENTIONALLY BEING LEFT BLANK)**

## **H. DETERMINATION AND ORDER**

24. Having examined all of the evidence presented through written and oral delivery by all Parties; and being guided by the provisions of the Act the Tribunal finds that the Claimant was Unfairly Dismissed.
25. The Tribunal finds that the dismissal should be overturned and replaced with a formal written warning for removing the table from the Respondent in April, 2021 without permission.
26. The Claimant shall be reinstated by the Respondent immediately.
27. The Tribunal finds that due to the Claimants conduct and the extent to which the Claimant caused and contributed to the dismissal the Claimant is awarded twenty-six (26) weeks salary.
28. The Respondent shall pay the Claimant in full no later than thirty (30) days from this Determination and Order.
29. The parties to this Hearing are reminded that the Determination and Order of this Tribunal is binding.
30. Any party aggrieved may however appeal to the Supreme Court of Bermuda on a point of law.

Dated this 25<sup>th</sup> day of August 2022

  
\_\_\_\_\_  
Mrs. Judith Hall-Bean  
Chairman

  
\_\_\_\_\_  
Ms. Valerie Young  
Deputy Chairman

  
\_\_\_\_\_  
Mr. Orin Simmons  
Tribunal Member