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LABOUR TRIBUNAL

Lorna Hampson, *Chairperson*	**James Kennedy,** *Deputy Chairperson*	**Angelita McLean,** *Member*	**Marie Reinke,** *Member*	**Anna Pereira Johnson,** *Member*
Shaun Cockle, *Chairperson*	**Halcy Lofters,** *Deputy Chairperson*	**Edward Solomon,** *Member*	**Kent McTaggart,** *Member*	**Williams P. Ebanks,** *Member*
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Chanda Glidden, *Chairperson*	**Ludivene Dilbert,** *Deputy Chairperson*	**Keisha James,** *Member*	**Peter Schmid,** *Member*	**Anna Pereira Johnson,** *Member*

DECISION

Case Title: [redacted] **V BUILT TECH LTD.**

Date of Hearing: Thursday, 10th April, 2014
9:30 am

In Attendance: Labour Tribunal Panel
Martha Rankine (Chairperson)
Anna Pereira Johnson (Member)
Jennodell Myles (Member)
Felicia Deslandes (Member)

Secretary:
Kara Connor

For Employee:
The Complainant was not legally represented
The Complainant called no witnesses

For Employer:
[redacted]

Witnesses:
None.

The hearing was closed to the press and the public

[redacted] **v BUILT TECH LTD.**

This is the Decision and Order of the Labour Tribunal in respect of the hearing of a complaint by [redacted] the "**Complainant**" against [redacted] former employer [redacted] owner of Built Tech Ltd. the "**Employer**". The complaint was heard by the Labour Tribunal (the "**Tribunal**") on the 10th April, 2014 commencing at 9:30 am in the Large Conference room of the Department of Labour & Pensions, Mid Town Plaza, Elgin Avenue, George Town, Grand Cayman.

The Tribunal has reviewed and carefully considered the written complaint and verbal submissions of the Complainant.

The Tribunal has reviewed and carefully considered the written response and verbal submissions of [redacted] Attorney on behalf of the Employer.

The Tribunal has reviewed and carefully considered the Employer's verbal submissions.

The Tribunal carefully reviewed all of the evidence and all relevant sections of the *Labour Law (2011 Revision)* (the "**Labour Law**") in reaching this decision.

SUMMARY OF EVIDENCE

The parties provided the Tribunal with a number of documents relevant to this claim. The Tribunal has set out the documents provided by the Complainant as follows:

1. Complaint form dated 20th April 2012.

The following documents were tendered on behalf of the Employer as follows:

2. Affidavit of [redacted] sworn on the 10th December 2014
3. Affidavit of [redacted] worn on the 10th December 2014
4. Copies of Complainant's initial temporary work permit
5. Copies of Complainant's pay stubs for the period of January 2011 to February 2012
6. Complainant's Payroll Summary

Background

The Complainant was employed with the Employer from the 8th December 2006 to Saturday 4th February 2012. [redacted] was employed as a Heavy Equipment/Backhoe Operator. The Complainant was employed by the Employer to work on contract jobs/projects for which the Employer was sub-contracted to complete.

From time to time, depending on work flow, the Complainant would be laid off from work on a temporary basis. The Complainant hours and work days varied, depending on the amount of work available. On average, the Complainant worked approximately 44 hours per week, earning approximately CI$500-600 weekly after deductions.

The Complaint

The Complainant

The Complainant asserts that [redacted] was employed with the Employer on a work permit for approximately 5 years. [redacted] commenced work on the 8th December 2006 until the 3rd February 2012, when [redacted] claims [redacted] was unfairly dismissed. [redacted] worked as a Heavy Equipment/Backhoe Operator. [redacted] was paid CI$11-13 hourly, and was paid on a weekly basis.

The Complainant further asserts that [redacted] worked, 'as and when' the Employer secured projects/jobs. At times [redacted] would work straight through without any time off until the particular project/job was completed. However, in the slow season, [redacted] would be temporarily laid off for days or weeks at a time.

During this period [redacted] states that there were never any performance issues with the Employer. [redacted] further states that in January 2012 [redacted] kept asking the Employer about [redacted] work permit renewal, as apparently [redacted] permit was due to end on the 9th March 2012. The Complainant asserts that [redacted] posed the question a few times, as initially the Employer would not reply to [redacted] query.

Thereafter [redacted] asserts that on Friday 24th February 2012, the Employer told [redacted] was no longer employed.

The Employer

According to the Employer, the Complainant was employed from the 8th December 2006 to Saturday 4th February 2012 as a Heavy Equipment/Backhoe Operator. The Complainant worked on an hourly basis and was paid weekly.

The Employer goes on to state that at the time the Complainant was the only Backhoe Operator [redacted] had, due to the decline in construction work as a result of the recession during that period. As the only Backhoe Operator the Complainant was given keys to the Employer's compound and enjoyed unrestricted access.

On or about January 2012, however, the Employer discovered that the Complainant was apparently not being honest as to the time [redacted] spent on a particular job, in essence, [redacted] was claiming for time [redacted] did not work. As a result the Employer took away the Complainant's keys, thus withdrawing [redacted] unrestricted access to the Employer's compound and equipment.

The Employer took away the Complainant's keys on Friday 3rd January 2012. The following day, the Employer contacted the Complainant as [redacted] needed [redacted] to operate the Backhoe for a job the Employer was offered by one [redacted] The Employer asserts, that the Complainant told [redacted] that [redacted] would only operate the Backhoe if the Employer himself drove it to the job site, and collected it after the work was completed. When questioned as to why [redacted] would demand this of [redacted] Employer, the Complainant replied that as the Employer had changed the rules on [redacted] was changing [redacted] rules on the Employer. As a result of the Complainant's refusal to collect the Backhoe, the Employer had to decline the job.

This exchange occurred on Saturday 4th January 2012, thereafter; the Employer did not see or hear from the Complainant until Friday 24th February 2012. The Complainant showed up at the Employer's office querying whether the Employer had submitted [redacted] work permit renewal. The Employer further asserts that the Complainant did not provide any explanation as to [redacted] unauthorized absence from work, and in fact when questioned by the Employer as to the reason for [redacted] absence, [redacted] refused to reply. Furthermore, the Complainant Complainant visit to the Employer's office was not to report to work, but only to query whether the Employer had submitted [redacted] work permit renewal.

The Employer states that as the Complainant did not report to work or communicate with [redacted] for approximately three weeks, [redacted] assumed that the Complainant had secured work elsewhere.

Furthermore, the Employer was advised that the Complainant was observed working with another local company, namely, S&D Trucking, which is in fact a competitor of the Employer. Apparently, it is the same company with whom the Complainant is currently employed.

The preceding information was relayed to the Employer by one [redacted] a Contractor who sub-contracted work to the Employer from time to time. [redacted] advised the Employer that [redacted] observed the Complainant operating a Backhoe that [redacted] knew did not belong to the Employer.

The Employer further states that contrary to the Complainant's claim that [redacted] was working 8-9 hours a day, 6 days a week for eight weeks is false. To support [redacted] assertion, the Employer provided the Tribunal with the Complainant's Payroll Summary for the period 2008-2011.

OBSERVATIONS

Pursuant to section 51(1) of the Labour Law;

"*Subject to subsections (2) and (3), a dismissal shall not be unfair if the reason assigned by the employer for it is...misconduct of the employee within section (52) (1)...*"

Section (52) (1) (a) states, *inter alia;*

"*An employer may terminate forthwith the employment of an employee where the employee has been guilty of misconduct... misconduct includes, but is not limited to situations in which the employee has-*

...conducted himself in such a manner as clearly to demonstrate that the employment relationship cannot reasonably be expected to continue..."

Furthermore section 52(4), states as follows;

"*... misconduct includes, but is not limited to, absenteeism.*"

DECISION

1. On reviewing the information provided at the Hearing, the Tribunal finds that the Complainant was not dismissed, but in fact, by [redacted] actions clearly renounced/abandoned [redacted] job. The preceding fell squarely within the parameters of Section 52 (1) (a) and 52(4) of the Labour Law.

2. The Complainant is not entitled to unfair dismissal compensation, as the Tribunal finds no evidence that [redacted] was terminated or of constructive dismissal on the part of the Employer.

3. The Complainant is not entitled to severance pay as the Tribunal finds no evidence that [redacted] was terminated or of constructive dismissal on the part of the Employer.

REASONS FOR DECISION

1. The Tribunal finds that the Complainant made the conscious decision to renounce [redacted] employment by [redacted] failure to present [redacted] to work for approximately three weeks.

2. It also appears that the Complainant's only reason for showing up at the Employer's office on Friday 24th February 2012 was to query whether the Employer had submitted [redacted] work permit renewal. The preceding demonstrates that [redacted] only interest at that point, was not his job, but the renewal of [redacted] work permit.

3. By [redacted] failure to report to work for approximately 3 weeks or provide an explanation as to [redacted] unauthorized absence, the Complainant clearly and unequivocally renounced and/or abandoned [redacted] job.

4. Furthermore, the Employer had reasonable grounds to warn and/or even dismiss the Complainant on Saturday 4th January 2012, when, as per the Employer the Complainant refused to operate the Backhoe (*in essence refused to perform [redacted] duties*) as [redacted] was contracted to do.

5. The Tribunal also took into consideration the Affidavit of [redacted] who attests to the fact that the Complainant was observed operating a Backhoe that [redacted] knew did not belong to the Employer. The preceding would indicate that the Complainant had alternative employment, however, [redacted] nonetheless expected the Employer to renew [redacted] work permit. Under the Immigration Law (as Revised) obtaining a work permit for someone who no longer works for the Employer is an offence under the said law. The Employer was therefore within [redacted] rights not to renew the Complainant's work permit.

ORDER/AWARDS

The Tribunal therefore makes no order for compensation in this matter.

SUGGESTIONS OF THE TRIBUNAL

The Tribunal takes this opportunity to draw the Complainant's attention to section 82 (1) of the Labour Law, and to be mindful of the penalties outlined.

Section 82 (1) of the Labour Law, states as follows;

"A *person who-*

(a) wilfully makes a false entry in any register, notice, certificate or document required by, under or for the purposes of this Law or any regulations made hereunder to be kept, served or sent;

(b) wilfully makes or signs a false declaration required by, under or for the purposes of this Law or any regulation or order hereunder; or

(c) knowingly makes use of any such false entry or declaration as aforesaid, commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for twelve months.

APPEALS

The Tribunal's decision, enforcement and appeals are governed by sections 75 to 78 of the Labour Law (2011 Revision). Any person aggrieved by this Tribunal decision by virtue of section 78 of the Labour Law may, within 14 days of notification of the decision or service of notice, appeal to the Appeals Tribunal.

Chairperson