DEPARTMENT OF LABOUR & PENSIONS
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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*
Samuel Banks, *Chairperson*	**Jennodell Myles,** *Deputy Chairperson*	**Isatou Sey,** *Member*	**Dana Brandon,** *Member*	**Clarence Bothwell,** *Member*
Robert H. Jones, *Chairperson*	**Martha Rankine,** *Deputy Chairperson*	**Noel Webb,** *Member*	**Sheena Sigsworth,** *Member*	**Felicia Deslandes,** *Member*
Kimbert Solomon, *Chairperson*	**Phillip D. Ebanks,** *Deputy Chairperson*	**James Whittaker,** *Member*	**Laura Young,** *Member*	**Deena Rivers,** *Member*
Chanda Glidden, *Chairperson*	**Ludivene Dilbert,** *Deputy Chairperson*	**Keisha James,** *Member*	**Peter Schmid,** *Member*	**Anna Pereira Johnson,** *Member*

DECISION

Case Title: v SBS

Date of Hearing: March 3rd, 2014
9:30am

In Attendance: **Labour Tribunal Panel**
Kimbert Solomon, *Chairperson*
Jennodell Myles, *Deputy*
Felicia Deslandes, *Member*
Kent McTaggart, *Member*

Secretary:
Kara Connor

For Employee:

The Complainant was not legally represented
The Complainant called no witnesses

For Employer:
for SBS Ltd.
The Complainant was legally represented by .
The Complainant called no 2 witnesses: .

The hearing was closed to the press and the public

This is the Decision and Order of the Labour Tribunal ("the Tribunal") in respect of the hearing of a Complaint ("the Complaint") filed by ("the Complainant") against his former employer SBS Ltd. ("SBS" or "the Employer"). The Complaint was heard by the Tribunal on the 3rd day of March 2014, commencing at 9:30 am in the Large Conference Room of the Department of Labour and Pensions, Midtown Plaza, Elgin Avenue, Grand Cayman.

Introduction

The Complaint was filed in this matter by the Complainant on 9th April 2013 and the Tribunal has reviewed and carefully considered the Complaint and reviewed and carefully considered the representations made on behalf the Employer.

In reaching this decision the Tribunal has also reviewed and carefully considered the sworn evidence of the Complainant and the sworn evidence of '), who appeared for the Employer. The Tribunal has also reviewed the relevant sections of the Cayman Islands Labour Law (2011 Revision) ("the Labour Law") and the Immigration Law.

Summary of Evidence

The material facts are as follows;

(a) The Complainant was employed with the Employer from December 28th 2008 to March 19th 2013;
(b) From the period December 28th 2008 until March 19th 2013 the Complainant required a work permit under the Immigration Law so as to be legally employed in the Cayman Islands;
(c) The Complainant's annual work permit was scheduled to expire automatically on March 19th, 2013, and this was a fact known to both the Complainant and Employer;
(d) In February 2013 the Complainant married a Caymanian, and immediately thereafter filed for Permanent Residence with the Right to Work;
(e) The Employer claimed that it was completely unaware that the Employee had married a Caymanian, and as a result, chased the Complainant on numerous occasions to execute the pending work permit renewal application, but the Complainant always refused or otherwise avoided providing the executed renewal forms;
(f) The Employee alleged that on return to work after agreed sick leave, the Employer on March 20th, 2013 informed the Complainant that his services were no longer required. The Complainant therefore alleged that his employment was terminated on March 20th 2013 by the Employer without Notice and that the termination was unfair. A question therefore for the Tribunal to determine was whether (or not) the Complainant was legally entitled to work in the Cayman Islands on March 20th, 2013;
(g) If the Complainant was not legally entitled to work in the Cayman Islands on March 20th, 2013 then counsel for the Employer submitted that any termination on that date would not have been unfair give the express wording of s51(1) of the Labour Law, as the continued employment of the Complainant would have in those circumstances been contrary to the Immigration law;
(h) The Complainant argued that the moment he submitted the application for Permanent Residence with the Right to Work he was legally entitled to work in the Cayman Islands, and therefore on March 20th 2013 his employment was terminated unfairly.

Decision

The Tribunal finds that (a) the Complainant did not inform the Employer that he had married a Caymanian; (b) that the failure of the Complainant to inform the Employer of his marriage to a Caymanian, compounded with the refusal to sign the annual work permit renewal form presented to him by the Employer, placed the Employer in the position of not being able to renew the Complainant's work permit.

The Tribunal further finds that (a) the ability of the Complainant to legally work in the Cayman Islands terminated automatically on March 19th 2013; (b) that the Complainant, contrary to his belief, was not able to legally continue working in the Cayman Islands immediately on submission of his application for Permanent Residence with the Right to Work.

In light of the evidence given, the Tribunal is of the view that the Complainant, thru his own actions viz. failing or refusing to complete his work permit renewal forms or otherwise taking the necessary steps to allow him to legally be employed in the Cayman Islands until his Permanent Residence application could be approved, allowed or otherwise caused his employment work permit to expire, and consequently there was no termination of the employment by the Employer, the same having ended on expiration of the annual work permit on March 19th 2013.

Orders/Awards

The termination of the employment was not unfair.

Appeals

The Tribunal's decision, enforcement and appeals are governed by section 75 to 78 of the Labour Law. 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
Signed this 10th day of March 2014