DEPARTMENT OF LABOUR & PENSIONS

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LABOUR TRIBUNAL

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DECISION

Case Title: **Telecayman Limited**

Date of Hearing: Wednesday, 15th July 2014

In attendance:

Labour Tribunal Panel
Robert Jones, Chairman
Dana Brandon, Member
Angelita McLean, Member
Sheena Sigsworth, Member
Noel Webb, Member

Secretary:
Kara Connor

For Employee:
[redacted]al Counsel

For Employer:
[redacted]Legal Counsel

The hearing was closed to the press and the public.

Introduction

1. This is the Decision and Order of the Labour Tribunal ("the Tribunal") in respect of the hearing of a Complaint ("the Complaint") filed by [redacted] ("the Complainant") against [redacted] former employer, TeleCayman Limited ("the Employer" or "TeleCayman").

2. The Complaint was heard by the Tribunal on Tuesday, 15th July 2014, commencing at 9:40 am in the Large Conference Room of the Department of Labour and Pensions, Midtown Plaza, Elgin Avenue, Grand Cayman.

3. The Complaint in this matter is dated 24th July 2013 and the Tribunal has reviewed and carefully considered the Complaint and the Tribunal has also reviewed and carefully considered the written representations made by the Employer, submitted under cover of a letter from the Employer's attorneys, [redacted] to the Department of Labour and Pensions dated 30th August 2013 and the attachments referred to.

4. In reaching this decision the Tribunal has also reviewed and carefully considered the sworn evidence of the Complainant and the sworn evidence of [redacted] of either WestTel Limited trading as Logic, or Logic Communications Ltd, or both ("Logic").

5. The Tribunal has also considered the legal arguments put forward by Legal Counsel for the Complainant and the legal arguments put forward by Legal Counsel for the Employer, together with the relevant sections of the Cayman Islands Labour Law (2011 Revision) ("the Labour Law").

Summary of Evidence

6. In [redacted] Complaint, the Complainant gave the start date of [redacted] employment with the Employer as 27th November 2007 and although the Tribunal did not have before it a copy of the Contract of Employment the Complainant should have received when [redacted] employment commenced, the Tribunal did have before it a letter from Logic to the Complainant dated 24th April 2013 (the "Logic Statement of Employment Letter") which confirmed that

> *"Effective Date*
>
> *Your transition date will be May 1st 2013 and will be your effective start date with Logic, however, you will enjoy continuity of service and your original start date of November 27th, 2007 will be enforced"*

7. As far as the Complainant's actual terms of employment with TeleCayman are concerned, the Tribunal also had to hand a copy of the "Employment Contract Renewal" made between (1) "TeleCayman Limited" and (2) [redacted] c/o TeleCayman Limited" which it appears was signed by the parties on 28th April 2012 and 29th November 2012 respectively. The Employment Contract Renewal refers to the Complainant being employed under the terms of the Contract from "*17th November 2012 through 16th October 2014*" and the other material provisions of the Employment Contract Renewal are

"2 Job Title and Responsibilities
The employee is employed as a Senior RF Engineer...

6 Hours of Work
The standard work week is 37 ½ hours. Hours of work are 8:30am to 5:00pm Monday to Friday.

7 Remuneration
The employee's rate of remuneration will be US$79,380.49 per annum...

10 Housing Allowance
You will receive a monthly allowance of US$1,500.00 to assist with [redacted] housing costs for the duration of your contract...

14 Notice/Termination Period
The notice period for termination of this contract for either party is ninety (90) days. Notice shall be in writing, addressed to the parties at the address shown above and either delivered by hand or post. Notwithstanding the foregoing, the employee may be terminated without notice for serious misconduct or for unsatisfactory performance..."

8. In [redacted] Complaint, the Complainant gave the date of the termination of [redacted] employment as 30th April 2013 and the Tribunal also had to hand a copy of the letter from [redacted] on the letterhead of Logic, to the Complainant and signed by the Complainant on 30th April 2013 which is in terms that

"This letter acknowledges your rejection of an offer of employment by Logic Communications Ltd. (Logic) for the position of Senior Radio Frequency Engineer. As a result, your last day of employment will be 30th April 2013. Please note that your work permit should be returned to Logic as of 30th April 2013 and that the Department of Immigration will be notified of your termination of employment.

Please be advised that as a result of your termination of employment, your medical benefits will be terminated as of 30th April 2013."

9. In [redacted] Complaint, the Complainant indicated that *"Logic purchased Telecayman's shares and whilst Logic did offer me employment with them the terms offered were not acceptable to me [and]...[a]s TeleCayman terminated me without giving me any reason (other than my wish not to work for Logic) they unfairly dismissed me"* and the Complainant claimed severance, unfair dismissal, redundancy and an entitlement to notice pay and a housing allowance.

10. In the sworn testimony [redacted] gave to the Tribunal, the Complainant said that although [redacted] was employed as a Senior Radio Frequency Engineer at TeleCayman and the offer from Logic was initially for the position of a Radio Frequency Engineer, [redacted] was eventually offered the job title of Senior Radio Frequency Engineer but [redacted] still did not believe that the offer from Logic was for the same job and/or did not provide [redacted] with the same job security.

11. In [redacted] Complaint, the Complainant said Logic's business and the business of TeleCayman were not identical and whilst TeleCayman had 4 Radio Frequency Engineers, Logic was only to have one. [redacted] said that [redacted] feared that if [redacted] accepted Logic's offer of employment, it would be able to use [redacted] to train others in the operation of TeleCayman's business and once that had happened, they could "*squeeze me out*".

12. [redacted] said Logic had already decided not to employ the other TeleCayman Radio Frequency Engineers and had made them redundant but they wanted to have one Engineer from TeleCayman and [redacted] believed he was "*the cheapest*".

13. The Complainant also expanded on the statement in [redacted] Complaint that [redacted] did not want to work for Logic by saying that [redacted] preferred working for smaller companies.

14. In cross examination it was put to the Complainant that the offer of employment by Logic was, to all intents and purposes, on the same terms as [redacted] employment with TeleCayman but the Complainant disagreed. [redacted] pointed out that the offer from Logic was subject to a confidentiality clause and a non-competition and non-solicitation clause.

15. The Complainant said [redacted] was also concerned that the offer from Logic included a performance review clause that stated that "*Your performance **will** be reviewed after 3 months of employment*" (emphasis added during the Complainant's testimony).

16. During cross-examination the Complainant confirmed that [redacted] had found alternative employment relatively quickly after the 30th April 2013 termination (which [redacted] had also confirmed in [redacted] Complaint) and that this alternative employment was with WestStar and that [redacted] contract with WestStar was subject to non-compete and non-solicitation clauses.

17. In [redacted] sworn testimony on behalf of the Employer, [redacted] confirmed that WestTel Limited trading as Logic had acquired the shares of TeleCayman and that the human resources department of WestTel's parent company had decided which of TeleCayman's employees should be offered positions at Logic and which should not.

18. [redacted] said that the decision as to who to keep on and who to let go was to a large degree dictated by the immigration status of particular TeleCayman employees. For example, those subject to work permits and whose permits were about to expire were not offered employment with Logic. [redacted] said that in the event, of the ten TeleCayman employees, four employees were offered full time employment and one was offered short term employment.

19. [redacted] said the Complainant was off island at the material time and so [redacted] sent the Complainant an email containing a job offer, which the Complainant wished to amend, so that it was more favorable to [redacted] gave as an example of this the fact that the Complainant asked for a salary of CI$110,000.00, an amount which [redacted] said would have been a 70% increase on that originally offered.

20. [redacted] said that the Complainant also requested other changes. Initially, the Complainant's job description was that of Radio Frequency Engineer but the Complainant wanted it changed to Senior Radio Frequency Engineer.

21. [redacted] said that [redacted] wanted to accommodate the Complainant as much as [redacted] could, since the Complainant had a background in wireless operations, whereas Logic was fibre-based. Logic had a new project in connection with the ICTA's requirement for free local content television channels and Logic had in mind that the Complainant could work on that project.

22. In the circumstances, [redacted] was prepared to increase the Complainant's salary by a certain amount, so that the revised salary was the same as or slightly more than the combined figure of the Complainant's salary/housing allowance at TeleCayman but [redacted] said Logic could not accede to the Complainant's CI$110,000.00 salary demand. Whilst the Complainant could be said to have had unique skills as far as Logic's operations were concerned, that in itself was not sufficient to allow the Complainant to negotiate a salary above the CI$83,000.00 Logic was prepared to offer [redacted] and which CI$83,000.00 offer put [redacted] in line with other senior Logic network engineers.

23. As far as [redacted] was concerned, during their negotiations the only issue for the Complainant was the level of salary. [redacted] said the issue of non-compete and non-solicitation clauses was not a matter the Complainant raised at all during their discussions. [redacted] said it was only ever a question of salary.

24. [redacted] confirmed that [redacted] asked the Complainant to come to see [redacted] again, in a final attempt to see if [redacted] could get the Complainant to accept the terms being offered, that is, the terms in the Logic Statement of Employment letter. The meeting was arranged for 30th April 2013 but in the meantime, the 30th April 2013 termination letter was drafted, so that if there was no agreement, [redacted] would ask the Complainant to sign the termination letter at the conclusion of their meeting, to confirm that [redacted] did not wish to accept Logic's offer.

The Law

25. As a matter of simple contract, the Complainant was employed by TeleCayman under the terms of the TeleCayman "Employment Contract Renewal". That Contract would terminate lawfully and for present purposes automatically and without the need for further notice, on 16th October 2014 and in those circumstances, there would be no dismissal.

26. If the Contract was to terminate lawfully before 16th October 2014, then for present purposes that would have to be by way of the Employer giving advance notice to the Complainant, or the Complainant giving advance notice to the Employer.

27. If the Contract expired on 16th October 2014, or if the Contract was brought to an end by the giving of adequate notice by either of the parties then, that would be the end of it as far as the common law was concerned and in particular, the Complainant could not claim that [redacted] was wrongfully dismissed. However, if the contract were to end before 16th October 2014 and in the absence of other factors, there would be a wrongful dismissal if no notice were given.

28. However, in addition to the position at common law, the Labour Law provides that as far as any termination by notice is concerned, the giving of any such notice by an employer might constitute unfair dismissal (but not wrongful dismissal) unless the notice was given for a specific reason and in relying on that reason, the employer acted reasonably in all the circumstances. The relevant provisions dealing with this are in Part VII of the Labour Law but since it is apparent that no notice to terminate was served, either by the Employer or by the Complainant, the provisions of Part VII are not set out here, nor are they considered.

29. The circumstances in this particular case show that the Complainant's employment status became relevant because of the purchase by Logic of TeleCayman's shares and it was argued by Counsel for the Employer that the purchase of such shares amounted to a transfer of TeleCayman's business to Logic and accordingly, the Complainant was not dismissed by TeleCayman but instead [redacted] resigned when [redacted] refused the terms offered to [redacted] by [redacted] then employer, Logic.

30. If the facts of this case showed that Logic simply purchased shares in TeleCayman then that in itself would not affect the employer/employee relationship between the Complainant and TeleCayman. The shareholders of a company can change but employees are still employed by the same company. In this case, TeleCayman.

31. However, it was argued by Counsel for the Complainant and it was not resisted by Counsel for the Employer, that in this case there was more than just a purchase of shares. Rather, the purchase of shares facilitated the asset stripping of TeleCayman by Logic. Some of TeleCayman's employees were kept on by Logic and some were not. In the case of the Complainant [redacted] was *"offer[ed]...employment with WestTel Limited trading as Logic"* (see the Logic Statement of Employment Letter dated 24th April 2013).

32. The arrangements made between TeleCayman and Logic then involved more than just a purchase of shares and in effect, there was an asset sale by TeleCayman to Logic, or a transfer of undertakings between TeleCayman and Logic and given this, on behalf of the Employer it was argued that the arrangements that were effected meant that there was no dismissal of the Complainant.

33. In support of this argument, Counsel for the Employer sought to rely on section 43 of the Labour Law, subparagraphs (a) and (b) of which provide

> *"(a) where without any break in service the employee is offered the same employment by a successor-employer in that same business, or part of business, he is not entitled to severance pay by reason of that termination; and*
>
> *(b) where he accepts such employment with the successor-employer his tenure of employment, for subsequent severance pay purposes, shall date from his original hiring by the first of a series of predecessor-employers."*

34. It was argued that Logic was the successor employer of TeleCayman and that the Complainant was offered the same employment by Logic in the same business. [redacted] refused the offer and so resigned.

35. However, the important words in section 43(a) for present purposes are *"by reason of that termination"*.

36. The provisions of section 43 in full are

"43. Where an employee's employment is terminated upon transfer in ownership of the business in which he is employed-

> *(a) where without any break in service the employee is offered the same employment by a successor-employer in that same business, or part of business, he is not entitled to severance pay by reason of that termination; and*
>
> *(b) where he accepts such employment with the successor-employer his tenure of employment, for subsequent severance pay purposes, shall date from his original hiring by the first of a series of predecessor-employers."*

37. In the Tribunal's view, section 43 does not alter the common law position stated earlier with regard to the termination of contracts. The Complainant's contract was with TeleCayman and the employer/employee relationship between them could only be brought to an end lawfully by the effluxion of time or by the giving of notice.

38. In [redacted] Amalgamated Collieries Ltd [1940] AC 1014 HL [redacted] said "*a contractual right to personal service was a personal right of the employer and was incapable of being transferred by him to anyone else and that a duty to serve a specific master could not be part of the property or rights of that master capable of becoming, by transfer, a duty to serve someone else*" (at 1018). He went on, "*a free citizen, in the exercise of his freedom, is entitled to choose the employer whom he promises to serve, so that the right to his services cannot be transferred from one employer to another without his assent*" (at 1020).

39. [redacted] also said that "*I do not see why there should be any great practical difficulty in the old company announcing to its work people that the undertaking is about to be transferred to a new company, giving the necessary notice to terminate existing engagements and informing the wage earners that the new company is prepared to reengage them on the same terms and that continuing service after such a date will be taken as acceptance of the new offer*".

40. The Tribunal recognizes that relying on a case that is more than 70 years old, couched as it is in archaic terms such as master and servant would not usually be apprpriate, particularly when the field of employment law has evolved so much in the last 30 years or so.

41. However, it seems that the legislation that has been passed in other jurisdictions, modifying the common law position set out in [redacted] has not been brought into force in the Cayman Islands

42. It was just over 30 years ago that the European Commission ("EC")'s Acquired Rights Directive (EC/77/187) became the Transfer of Undertakings (Protection of Employment) Regulations 1981 ("the TUPE Regulations 1981") in the United Kingdom.

43. The TUPE Regulations 1981 sought to ensure that the contracts of employment, as well as the statutory rights of employees, are automatically transferred to any new owner, thereby completely changing the common law position. Regulation 5 of the TUPE Regulations 1981 provides

> *"5. Effect of relevant transfer on contracts of employment, etc.*
>
> *(1) Except where objection is made under paragraph (4A) below* ***a relevant transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor in the undertaking or part transferred but any such contract which would otherwise have been terminated by the transfer*** *shall have effect after the transfer as if originally made between the person so employed and the transferee.*
>
> *(2) Without prejudice to paragraph (1) above but subject to paragraph (4A) below on the completion of a relevant transfer –*
>
> *(a) all the tranferor's rights, powers, duties and liabilities under or in connection with any such contract, shall be transferred by virtue of this Regulation to the transferee; and*
>
> *(b) anything done before the transfer is completed by or in relation to the transferor in respect of that contract or a person employed in that undertaking or part shall be deemed to have been done by or in relation to the transferee...*
>
> *(4A) Paragraphs (1) and (2) above shall not operate to transfer his contract of employment and the rights, powers, duties and liabilities under or in connection with it if the employee informs the transferor or the transferee that he objects to becoming employed by the transferee.*
>
> *(4B) Where an employee so objects the transfer of the undertaking or part in which he is employed shall operate so as to terminate his contract of employment with the transferor but he shall not be treated, for any purpose, as having been dismissed by the transferor.*
>
> *(5) Paragraphs (1) and (4A) above are without prejudice to any right of an employee arising apart from these Regulations to terminate his contract of employment without notice if a substantial change is made in his working conditions to his detriment; but no such right shall arise by reason only that, under that paragraph, the identity of his employer changes unless the employer shows that, in all the circumstances, the change is a significant change and is to his detriment."*

44. The TUPE Regulations 1981 were in force in the United Kingdom when the Labour Law, Law 30 of 1987 came into force and in the United Kingdom, the relevant current enactment is the Transfer of Undertakings (Protection of Employment) Regulations 2006 implementing the EC's Acquired Rights Directive (No 2001/246).

45. But the Labour Law does not appear to include or reflect the provisions included in Regulation 5 of the TUPE Regulations 1981 and so in the Tribunal's view the words in section 43 *"Where an employee's*

employment is terminated upon transfer in ownership of the business in which he is employed" indicate that the effect of Acquired Rights Directive (EC/77/187) did not become part of Cayman's employment legislation, as it did with the United Kingdom's employment legislation.

46. What the Labour Law 30 of 1987 appears to have included or reflects are the provisions of section 94 of the now repealed Employment Protection (Consolidated) Act 1978. Section 94 of that Act provided

> *"94(1) The provisions of this section shall have effect where –*
>
> > *(a) a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of a business for the purposes of which a person is employed, or of a part of such a business, and*
> >
> > *(b) in connection with that change the person by whom the employee is employed immediately before the change occurs (in this section referred to as 'the previous owner') terminates the employee's contract of employment, whether by notice or without notice.*
>
> *(2) If, by agreement with the employee, the person who immediately after the change occurs is the owner of the business, or of the part of the business in question, as the case may be (in this section referred to as 'the new owner'), renews the employee's contract of employment (with the substitution of the new owner for the previous owner) or re-engages him under a new contract of employment, sections 84 and 90 shall have effect as if the renewal or re-engagement had been a renewal or re-engagement by the previous owner (without any substitution of the new owner for the previous owner)."*

47. Section 94 sought to modify the contractual position in the United Kingdom to the extent only of affording protection to a former employer, by barring the right of a former employee to claim redundancy if, on the change of ownership, the employee accepted the offer of re-engagement by the transferee company. Statutory continuity of service was preserved by section 94 (and currently the position remains the same in the United Kingdom by virtue of the Employment Rights Act 1996 s218 (2)).

48. It would appear then that where any change in ownership occurs, both section 43 of the Labour Law and section 94 of the Employment Protection (Consolidation) Act 1978 (and now section 218(2) of the Employment Rights Act 1996) can protect the previous owner from having to pay severance, whilst at the same time allowing the employee ultimately to claim severance from the new owner, if the employee is offered a contract by the new owner, or is re-engaged by the new owner and when the employee's employment with the new owner comes to an end.

49. However, neither section 43 nor section 94 appear to affect the common law position that on such a change of ownership, the contract of employment between the previous owner and the employee comes to an end.

50. In section 2, the Labour Law defines a predecessor employer *"in relation to the employment of an individual as it affects his right to severance pay"* as a person *"by whom that individual was employed,*

and who subsequently transferred the business in which that person was employed to a new owner in circumstances that the employment of the employed individual is continued by the new owner of the business".

51. In section 2, the Labour Law also defines a successor employer again *"in relation to the employment of an individual as it affects his right to severance pay"* as a person "*who takes over the business in which that individual is employed from a predecessor employer of that individual and continues to employ him in the same employment*".

52. Therefore, both definitions are in relation only to an employee's right or otherwise to receive and an employer's obligation or otherwise to pay, severance.

53. Thus, the wording of section 43 recognises the common law position that an employee's employment is terminated upon any transfer and neither section 2 nor section 43 changes the common law position in that regard. The only relevance of section 43 is that if the employee takes up employment with the successor employer, the employee cannot at that stage claim severance pay from [redacted] predecessor employer. [redacted] successor employer takes over the predecessor's obligation to pay what the predecessor employer would otherwise have had to pay by way of severence.

54. The Labour Law is a fairly concise statute but the basic employment law provisions and principles it contains reflect to a large degree the basic employment law provisions and principles which are contained in the relevant United Kingdom legislation, certainly as far as terminations and dismissals are concerned.

55. So whilst the United Kingdom legislation does not apply in the Cayman Islands, that legislation and the texts and the case law that deal with it, whilst not binding on the Tribunal, can provide guidance to the interpretation of the basic principles contained in the Labour Law, where local conditions permit.

56. In that regard, the drafters of the Labour Law 30 of 1987 appear to have included in the Cayman statutory regime the protection for employers against having to pay severance when they transferred a business but the drafters did not include in the statutory regime the TUPE Regulations 1981 arrangement, whereby contracts of service underwent a novation, without the consent of the employee.

The Tribunal's Observations

57. In light of the Tribunal's conclusions as to the state of the law in Cayman in this area, it appears that the Tribunal does not have to decide whether or not the purchase of shares in TeleCayman by Logic amounted to a transfer of TeleCayman's business to Logic, for the purpose of deciding the Complainant's unfair dismissal claim.

58. The Complainant had a contract of employment with TeleCayman and either

- Logic offered the Complainant a separate contract, in the same terms as the TeleCayman contract or otherwise, which the Complainant was at liberty to refuse or accept and if [redacted] refused and TeleCayman was no longer able to employ [redacted] or no longer able to employ

[redacted] until 16th October 2014, [redacted] contract with TeleCayman would come to an end, lawfully on notice, or otherwise and [redacted] would be entitled to severance from TeleCayman; or

- TeleCayman transferred its business to Logic; an act which in itself would have resulted in the termination of the Complainant's contract with TeleCayman and the Complainant was then at liberty to decide whether or not to accept or refuse Logic's offer and only if [redacted] accepted it, would [redacted] entitlement to severance be postponed and transferred to Logic.

59. Section 43 does not appear to effect the usual contractual consequences, whether a transfer of ownership occurred or not. Section 43 only speaks to who ultimately is to pay any entitlement to severance an employee may have, the previous owner or the new owner, in the event that the employee becomes an employee of the new owner, without a break in service.

60. In submissions, neither Counsel for the Complainant nor Counsel for the Employer referred the Tribunal to any authorities that countered the Tribunal's interpretation of section 43 (or indeed any authorities) but if the Tribunal had been referred to any Cayman Islands authority that states that a transfer of undertaking does not automatically terminate an employee's contract of employment, in the same way as Regulation 5 of the TUPE Regulations 1981 means a contract is not automatically terminated, then the Tribunal would have had to consider whether the TeleCayman share sale did in fact constitute a transfer, so as to preserve for Logic the Complainant's contract with TeleCayman and if so, whether the Logic Statement of Employment then represented *"the same employment...in that same business"*.

61. A transfer of undertakings has been described as a "*transfer of an undertaking, business or part of an undertaking or business...to another person where there is a transfer of an economic entity which retains its identity*" (TUPE Regulations 2006; Regulation 3(1)(a)).

62. It has been held that simple share sales in themselves usually fall outside the scope of TUPE, since a change in ownership of the employer, brought about by the sale of shares, has no impact in itself on the contractual relations between the employer and the employee (see [redacted] Services Ltd and anor 1998 ICR 1198 EAT) but the Tribunal has concluded that here, there was more than just the sale of shares.

63. Here, the share sale allowed Logic to asset strip TeleCayman and so the fact that the economic entity in question should retain its identity, (see [redacted] EAT) would appear to undermine the argument made on behalf of the Employer that there was a transfer of an undertaking in this case, since it appears that TeleCayman did not continue its operations and the majority of its employees were not retained.

64. But if the law in Cayman is that a transfer of an undertaking does not automatically terminate an employee's contract of employment and if the TeleCayman share sale did constitute a transfer, then the further question to be answered is whether or not the Logic Statement of Employment represented the same employment, on the same terms.

65. On behalf of the Employer it was argued that the imposition on the Complainant of restrictive covenants, that [redacted] was not subject to under his TeleCayman contract, was not a material change. It was argued that such restrictive covenants were "universal" in Cayman. The Tribunal's view is that if covenants seeking to restrict an employee from working in the same industry but for a different employer, for a certain period of time after leaving [redacted] current employer, were universal or at least common place, then a contract not containing clauses to that effect might be seen to be all the more valuable.

66. And if the fact that such covenants were universal was meant to suggest that Logic was merely asking the Complainant to sign a contract that was the same in these material terms as the contracts of other Logic staff, then the request of the Complainant to sign a contract containing such terms would be "transfer related" and the relevant case law establishes that simple harmonization of contractual terms is usually a transfer connected reason and transfer connected reasons are not permitted by TUPE (see [redacted]

67. In correspondence it was said that *"the shareholders of TeleCayman sold all of their shares to WestTel trading as Logic, that the officers of TeleCayman resigned and that no employees continued with TeleCayman but former employees were offered similar or better positions with the purchasing entity [Logic]"* [redacted] to Department of Labour and Pensions dated 30th August 2013).

68. The letter should have said *"but some former employees were offered"*, since in [redacted] evidence [redacted] of Logic said that of TeleCayman's 10 employees, only 4 were offered full time positions, one was offered a part-time position and the others were made redundant.

69. In any event, the Employer's position is that the Complainant was not made redundant [redacted] letter of 30th August 2013) and so as a matter of law [redacted] remained an employee of TeleCayman.

70. The evidence that was given in this case and the submissions that accompanied it suggest that Logic was not a successor employer to TeleCayman but even if it were, the Tribunal does not believe that the Complainant's contract of employment with TeleCayman automatically transferred to Logic. It did not. It remained with TeleCayman.

71. At that stage TeleCayman should have brought the Complainant's contract to an end, by giving [redacted] 3 months' notice. Had TeleCayman appreciated this, it could have done so on the grounds that the Complainant was redundant.

72. But TeleCayman did not do so. Instead, Logic offered the Complainant a position which [redacted] did not accept and as a consequence [redacted] was informed in writing by Logic that the *"last day of employment, [with TeleCayman] will be 30th April 2013"*, that is, that same day.

Decision

73. In the circumstances, the Complainant's contract with TeleCayman was terminated otherwise than in accordance with section 10 of the Labour Law, the termination was therefore unlawful and the Complainant was unfairly dismissed. Furthermore, since [redacted] was dismissed for a reason other than

misconduct, or substandard performance, [redacted] is entitled to severance pay. The provisions of section 43 not applying to the Complainant because [redacted] was not offered the same job in the same business.

Orders/Awards

74. Compensation for unfair dismissal is calculated in accordance with section 55, which states that any award shall not exceed one week's wage for each completed year of service.

75. The Tribunal notes that the Complainant was able to secure alternative employment shortly after the 30th April 2013 dismissal, on terms that were comparable to [redacted] terms with TeleCayman and so it is arguable whether or not any unfair dismissal award should be something less than the statutory maximum. However, the Tribunal is of the view that the Complainant should recover the maximum allowed (5 weeks at US$1,526.55 per week) same being US$7,632.74, in view of the unfairness of the dismissal (no notice after 5 years of employment and without continued health care cover).

76. In this regard, the Tribunal is also mindful of the fact that the Complainant should not be penalized for finding alternative employment so quickly in this case, particularly since that turn of events may be dealt with elsewhere and tend to mitigate any contractual entitlement [redacted] may have for damages for wrongful dismissal. It is also noted the effects of section 55(4) on any such damages awarded.

77. Severance is calculated in accordance with section 40(1), that is one week's wage at the employee's latest basic wage, for each completed twelve month period (5 weeks at US$1,526.55 per week) same being US$7,632.74.

78. The Tribunal therefore awards the Complainant US$15,265.48.

Appeals

79. 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.

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Chairperson
Signed this day of August 2014