



Labour Tribunal

CAYMAN ISLANDS GOVERNMENT

LABOUR TRIBUNAL DECISION

Matter:

Date of Hearing: 2 September 2025 and 11 September 2025

Location: Virtual Hearing

Labour Tribunal Panel Joshua Zimmer (Deputy Chair)

Chairperson: Peta-Gaye Golaub-Symons

**Labour Tribunal
Secretary:** Kara Connor

**Employee/
Complainant:** Represented by Mr. Greg Walcolm of Murray & Westerborg

Employer/Respondent:
Represented by Mr. Alastair David of HSM Attorneys
Witnesses:

Observers: None

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 ("the ***Complainant***") against former employer (the

As discussed, we are pleased to confirm that it has been mutually agreed that you will continue to work for . We are therefore able to offer ongoing employment terms, on a fixed term contract with effect from Tuesday .

7. From to the Complainant worked on fixed term contracts with the Employer. The First contract starting and ending . A second fixed term contract was offered on until . A third fixed term contract was offered on until . On a fourth and final fixed term contract was offered until .
8. The Complainant worked with the Employer until , when fourth and final fixed term contract had ended. The Complainant seeks severance pay for the period from to where contends was working for a continuous period of permanent employment.

The Law

9. The matter presently before the Tribunal primarily involves question/dispute as to the severance entitlement of the Complainant.
10. The Tribunal has jurisdiction to hear this matter pursuant to section 74(1) of the Labour Act. Section 74(1) states: "There are established Labour Tribunals for the purpose of hearing complaints from employers and employees.". The word "complaint" is defined in section 2 of the Act as meaning, "... a formal complaint made to the Director under section 46 or 54." Section 46(1) provides:

46 (1) *Should any question arise as to the date of hiring or as to whether or in what amount severance pay is due to an employee, then the employee, or the employer, or their respective representatives, may seek a resolution of the question by filing a complaint as to severance pay in writing with the Director.*

11. Right to severance pay is outlined at paragraph 40(1) of the Labour Law. Section 40(1) provides:

40 (1) *Every employee whose term of continuous employment with an employer and any predecessor - employer has in aggregate exceeded one year is entitled to receive, in addition to any other payments which may be due to the employee, upon termination of that persons's employment by that person's employer for any reason, other than a dismissal which is within (a), (b) or (c) of section 51 (1), severance pay, being payment in money calculated in accordance with this Part.*

12. In order to succeed the Complainant must satisfy the Tribunal that: (1) there was continuous employment with an employer exceeding one (1) year; and (2) there was termination of employment by the employer for any reason other than dismissal with section 51(1)(a),(b) or (c).
13. In the present case the Tribunal is satisfied, based on the evidence, that the Complainant had worked continuously with the Employer and the predecessor employers for a period exceeding one (1) year (from 6 to .

14. The Tribunal will now turn to the question as to whether the contract of employment was terminated by the Employer. The reason for termination must be other than those outlined at sections 51(1)(a),(b) or (c) of the Law. Section 51(a), (b) and (c) states as follows:

51 (1) *Subject to subsections (2) and (3), a dismissal shall not be unfair if the reason assigned by the employer for it is —*

(a) misconduct of the employee within section 52(1);

(b) that it is under section 52(3), namely misconduct following the receipt of a written warning;

(c) that it is under section 53(2), namely failure of the employee to perform that person's duties in a satisfactory manner following the receipt of a written warning;

15. Based on the information and evidence provided it is clear that the Complainant was not terminated for any of the reasons outlined at section 51(1) of the Labour Law.

16. In the present case, it is the Employers contention that the Complainant is not entitled to severance as was on a fixed term contract during the period to , and that due to the nature of the contract of employment (being that of a fixed term contract) that employment ended automatically on - there being no act on the part of the Employer of terminating the contract of employment of the Complainant.

17. The Labour Tribunal in the matter of of noted at paragraph 19 of it's decision: "Section 40(1) of the Law makes plain that severance is only payable upon termination of employment by the employer (underline added) and under section 50 no unfair dismissal occurs if an employee is dismissed at the expiration of a fixed term." This outlines the position of the Labour Tribunal with respect to severance and unfair dismissal generally.

18. The term "fixed term contract" is not defined in the Law, but is understood by the Tribunal as meaning a contract of employment with a fixed end date. Further section 9 of the Law provides that: "Where the contract of employment is for a fixed term it shall terminate automatically and without further notice on the expiration of that term unless previously extended by prior agreement, or unless the terms of the contract specify otherwise."

19. Section 9 of the Law essentially provides that a fixed term contract terminates automatically upon expiration of the fixed term without any further notice on the part of the employer or employee. In effect, this merely provides that neither the Employer or Employee is required to provide notice prior to termination. This Tribunal does not accept that by virtue of a contract of employment being deemed to be a "fixed term contract" means in any way that the employee is not entitled to the basic entitlements provided under the Labour Law. Hence, despite a contract being labelled a "fixed term contract", this may not always be the case. The Tribunal still has jurisdiction to hear and matter and make awards for unfair dismissal and potentially award severance depending upon the circumstances of each case.

20. In the present case the Tribunal does not agree with the Employer's argument that the Complainant worked under a fixed term contract from to .

21. Clause 16.5 of the Contract of Employment states:

"The Employer's normal retirement age will be 60, as amended from time to time under Cayman Islands law, at which time your employment will automatically terminate by reason of retirement unless your employment is extended in accordance with any retirement policy from time to time in force. The current retirement policy (which does not form part of your contract of employment can be found in Section 2 of the Handbook.)"

22. It is clear from clause 16.5 that the date of retirement of the Employee was at the discretion of the Employer. Clause 16.5 stated that the Contract of Employment would automatically terminate upon retirement, which at the date of the Contract of Employment was age 60. Counsel for the Complainant noted, which the Tribunal accepts, that there is no mandatory age of retirement in the Cayman Islands. In other words there is no statutory requirement under the law for the Complainant to cease working and was legally able to work with the Employer past the age of 60 years. Further clause 16.5 of the Contract of Employment extended the Employers discretion by providing that employment could be extended in accordance with any retirement policy in force from time to time. The Contract of Employment explicitly states that the current retirement policy did not apply to the Complainants contract, therefore the use of the clause "any retirement policy", serves to in effect extend the Employers discretion.
23. Furthermore, the evidence before the Tribunal is that, despite the Complainant attaining the age of 60 years, the Employer allowed to continue to work beyond that age to age 65, this was allowed even though the pensionable age was not yet changed by legislation. Based on the wording of clause 16.5 of the Contract of Employment, which provided wide discretion to the Employer, together with Employer's conduct (by allowing the Complainant to continuing to work when attained the age of 60 years through to age 65 years) the Tribunal finds that the contract of employment was a permanent continuous contract of employment and not a fixed term contract.
24. The defining characteristic of a fixed term contract is that it has a fixed/clear end date, in the present case the Tribunal finds that the Contract of Employment was not a fixed term contract as the explicit wording of the contract and the conduct of the Employer demonstrate that the end date was at the discretion and/or solely determined by the Employer based on its retirement policy from time to time.
25. The Tribunal finds that the Employer terminated the Complainant's permanent employment contract on and re-engaged on successive temporary fixed term agreements. The Offer Letter dated , specifically the first two paragraphs of that letter stated:

"As a result of you reaching Cayman retirement age of 65 on , please note that your current permanent contractual terms will cease on Monday .

As discussed, we are pleased to confirm that it has been mutually agreed that you will continue to work for . We are therefore able to offer ongoing employment terms, on a fixed term contract with effect from Tuesday ."

26. The Employers Offer Letter of (as outlined above) refers to the Complainants Contract of Employment as "permanent contractual terms", and offer employment on fixed term with the duration being to . In successive offer letters of , and , the Employer refers to those arrangements as "Temporary Employment Agreement."
27. The Tribunal finds that the nature of Complainant's employment had changed substantially from that of "permanent contractual terms" to "Temporary Employment Agreement". A change from permanent to

temporary employment is a significant change in the nature of employment. It means that the Complainant no longer had the security of tenure of a permanent contract but was then limited to temporary employment which terminates automatically on the prescribed date. was offered three fixed term contracts for a period of 12 months each and a final three month fixed term contract. Due to the significance in the change and the surrounding facts of this case the Tribunal finds that the Complainant's permanent contract of employment was terminated by the employer, who then re engaged on a temporary basis.

28. The Tribunal finds that the employer did not wish to engage the Complainant on "permanent contractual terms", as such it terminated that contract, even though the Complainant could have continued to work on such terms for the rest of tenure with the Company, as the end date of that Contract of Employment the Tribunal finds was at the discretion of the Employer.
29. The Tribunal does not accept the Employer's argument that the subsequent offer of temporary employment was a variation of contract as the Offer letter of clearly stated that the permanent contractual terms ceased. There is no reference to a to the word 'variation' or phrase 'variation of contract', which would have been a clear indication of a variation. In the present case the contract was referred to as having been "ceased". This language, the Tribunal finds, demonstrates that the contract was terminated and employment was being offered on different terms, in this case on a Temporary basis as opposed to a permanent contract of employment.
30. The Tribunal agrees with Counsel of the Complainant that there is no mandatory statutory age of retirement in the Cayman Islands. The Pension Act does not limit the working age but stipulates when a person is deemed to be of pensionable age. There is therefore no statutory requirement for the Complainant to stop working at 65 years. The Complainant is legally able to work beyond age 65 years and could have continued to work under permanent Contract of Employment. The Tribunal finds that the Employer, within it's discretion, terminated the permanent contract and offered the Complainant work on successive fixed term contracts/ Temporary Employment Agreement.
31. Prior to the Complainant working on temporary fixed term contracts from onwards, worked on a permanent contract for a period of approximately years. Based on the terms of the agreement and the conduct of the Employer, the Tribunal finds that the Complainants tenure was at the discretion of the Employer. In the present case the employer decided to keep the Complainant on despite the pensionable age not being officially changed and then keeping on until aged 65. It is clear the Employer decided that it did not want to keep the Employee on a continuous permanent contract and decided to terminate the Agreement and then proceeded to re employ on successive fixed term/temporary contracts.

32. Section 7 of the of the Labour Act provides:

"Any person who is re-employed by the same employer or, where the severance pay required under this Act has not been paid to the employee, by the successor-employer, within thirty days of the person's employment shall not be regarded as a new employee, but that person's employment shall be regarded as continuous with that person's earlier period of employment for the purposes of the calculation of that person's period of probation and of any benefits under this Act."

33. Pursuant to section 7 of the Labour Act where a person is re-employed by the Employer as in the present case or where severance pay has not been paid to the employee by the successor employer, for the purposes of calculation of benefits (or period of probation) under this Act, that persons employment shall be regarded a continuous with that persons earlier period of employment.

34. In the present case the Tribunal has determined that the Complainant's permanent contract of employment was terminated on _____, at which time _____ would have been entitled to severance. Less than thirty (30) days later _____ was re-employed by the employer under successive fixed term contract from _____ to _____. For the purposes of calculating _____ benefits pursuant to section 7 of the Act, the Complainant is not to be regarded as a new employee but _____ employment must be regarded as continuous from _____. Severance is an entitlement or benefit under the Act, therefore in calculating severance the Tribunal must take into consideration the provision in section 7. The Tribunal therefore awards severance to the Complainant for the period from _____ and the period from _____ to _____ (which was the last date of the Complainant's employment with the Employer). The Complainant seeks severance from _____ to _____, however, the Tribunal finds that subject to section 7 of the Act _____ entitlement under the Law is from _____ to _____.
35. In this particular case the Complainant did not complain of unfair dismissal or seek an award for the same, despite _____ permanent employment being terminated for no apparent reason. This Tribunal makes no decision with respect to unfair dismissal in this case as this was not claimed, however, this decision should not be a precedent to preclude persons from making a claim for unfair dismissal in similar circumstances, where such a claim is within the statutory time limitations.

Orders/Awards

The decision of the Tribunal is that the Complainant is awarded severance as follows:

Severance of _____

Total Severance: _____

Right to Appeal

The Tribunal's decision, enforcement and appeals are governed by section 75 to 78 of the Labour Law.

Section 78(1)

Any person aggrieved by:

- (a) any decision of a Labour Tribunal upon a complaint where the award exceeds five hundred dollars;
- (b) the service of a remedial notice;
- (c) any decision of a Labour Tribunal that his dismissal was fair;
- (d) any refusal of a Labour Tribunal to register an overtime agreement; or
- (e) any decision of a Labour Tribunal that no award should be made,

may, within (14) fourteen days of notification of the decision or service of the notice, appeal to the Appeals Tribunal:

Provided that an employee may appeal an award of less than five hundred dollars where he claims that the award have exceeded five hundred dollars.

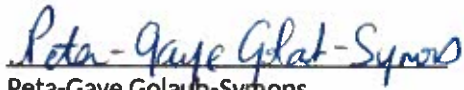
(2) An appeal under subsection (1) is brought by giving notice in writing to the chairman of the Appeals Tribunal.

(3) The giving of a notice of appeal pursuant to subsection (2) operates as a stay upon any award made by a Labour Tribunal.

(4) The notice of appeal under subsection (2) shall also be served upon a Labour Tribunal and in the case of an appeal from a decision of a Labour Tribunal upon a complaint, upon all persons who were invited to appear before a Labour Tribunal under section 75(6).

(5) Upon receipt of a notice the Chairman of the Tribunal shall fix a date for the hearing of the appeal, being not less than one month nor more than three months from the date of his receipt of the notice of appeal, and shall give notice of that date forthwith to the appellant and to all parties who were entitled to receive the notice of appeal pursuant to subsection (4).

(6) All persons entitled to receive the notice of appeal pursuant to subsection (4) shall be entitled to appear at and be heard upon the hearing of the appeal, or upon any adjourned hearing.



Peta-Gaye Golaub-Symons
Labour Tribunal Chairperson

7 October 2025