

**Decision of the Board Dispute filed under:
Employment Act 2000 (the “Act”)**

between

(“Complainant”)

And

And

(“Respondents”)

Hearing Date: 16th December 2021

Place: Century House - Ground Floor, 16 Par la Ville Road, Hamilton, HM11

**Present: Ms. Kelly Francis (Chair)
Mr. Eugene Creighton (Panelist)
Ms. McKeisha Smith (Panelist)**

Preliminary: Matter to be heard before the Employment Tribunal for determination pursuant to the Employment act 2000.

Background

The matter placed before the Tribunal is an allegation that the Respondent has offended two sections of the Employment Act 2000- namely, Section 8 - Unauthorised Deduction and Section 6 - Reduction of Work Hours.

Specifically, the Complainant contends that in April 2021 she was deducted twice for her portion of Social Insurance for the same one week period. Secondly, the Complainant contends that from the period of May 2020 - June 2021, she was not permitted to work her agreed full time schedule of 40 hours per week as outlined in her contract. As the number of hours she was permitted to work were further reduced, she then resigned and is seeking payment for the lost hours.

For ease of reference, S.8 reads:

*An employer shall not make a deduction from an employee's wages unless—
the deduction is required or authorised to be made by virtue of this or any other enactment, a collective agreement or a provision of the employee's contract, or by order of any court or tribunal; or
the employee has previously signified in writing his agreement or consent to the making of the deduction.*

For ease of reference, S.6.5 reads:

Where—

additional matters to be included in the statement are prescribed under paragraph (r) of subsection (2); or

the employer and employee agree to change any of the terms of employment particularised in the statement;

The Case of the Respondents

1. The Respondents acknowledged their error in taking a second social insurance deduction for the same one week period. As they have already confirmed this error in writing and their commitment to repay the deducted amount of \$35.92, no further discussion or resolution was required by the Tribunal.
2. The Respondents contend that prior to the Complainant departing on Maternity leave, the two parties enjoyed a solid and beneficial working relationship and the Complainant enjoyed regular annual bonuses and weekly overtime payments for all hours worked beyond 40 hours per week.
3. The Respondents contend that the Complainant initiated the original contract changes and when finally advised that she would not be permitted to continue to have her children attend the workplace, the Complainant first requested an immediate leave of absence and subsequently submitted her resignation.

4. The Respondents also contend that throughout the history of employment, the Complainant appeared willing and agreeable at all times with respect to schedule changes regardless of who initiated the changes.
5. The Respondents contend that the Complainant was not reasonable or realistic in her desire to have her two children (one, 12 years of age and the other an infant), accompany her to the workplace where she was responsible for caring for their three children. They further contend that the Complainant was not forthcoming about her plan to bring both children to the workplace on a permanent basis and that this was not a viable arrangement as she was not able to perform her contracted duties adequately or fully.
6. The Respondents contend they tried to encourage the Complainant to consider securing childcare for her children so that she could resume working as contracted and she was not willing to consider this as an option despite the offer of increased work hours to offset the costs. They further contend that they permitted the Complainant to bring her infant son to work with her as a short term measure only and never consented to either an ongoing arrangement or, for her 12 year old to accompany her to work.
7. The Respondents contend that the Complainant clearly stated that she would not be able to work her previous schedule due to her commitments to her children and that all schedule changes were either at her request or, with her consent.
8. The Respondents contend they tried to work with the Complainant to establish a consistent work schedule that was suitable for all parties but she was unwilling to participate in further discussions and eventually terminated her employment without notice or working her notice period.
9. The Respondents contend that the Complainant's calculation of lost wages is not accurate. They state that the Complainant requested that she complete some of her duties on the weekend as she was unable to keep up with everything during the week. The Respondents agreed to this request; however, contends that these hours were part of her normal 40 hour a week work schedule and did not constitute overtime.
10. The Respondents contend that the Complainant's actions between June 18th ~ 23rd 2021, left them extremely disadvantaged and they were forced to seek emergency childcare from an agency as they both had fulltime work commitments which required their attention.
11. The Respondents contend that the Complainant has received all funds owing to her for work performed and is only owed the following which they have no objection to paying:
 - a. Repayment of the additional social insurance deduction;
 - b. Reimbursement of the health insurance rebate from Argus Insurance

The Case of the Complainant

1. The Complainant opened her arguments by sharing with the Tribunal that she believed it was acceptable to bring her infant son to work with her when she returned from maternity leave and that the Respondents understood she would be doing so and had given her permission to do so on a permanent basis.
2. The Complainant contends that she was able to fully and satisfactorily perform all aspects of her role and that the presence of her children did not detract from this.
3. The Complainant contends that the Respondents consistently changed her work schedule resulting in her working less than the agreed 40 hours per week.
4. The Complainant contends that she did not receive overtime pay for hours worked on the weekends.
5. The Complainant contends that on June 18th, 2021, she was advised by email that she could no longer bring her children to work and that this contradicted the previous agreement which allowed her to bring her children to work.
6. The Complainant does not dispute the fact that upon receiving the email from the Respondents, she requested an immediate leave of absence, nor does she dispute the fact that after working a significantly reduced schedule for a few days, she subsequently terminated her employment.
7. The Complainant contends that she is owed 40 hours per week for weeks when she was working far less and, overtime for the hours worked on the weekends.

Deliberation of the Tribunal

1. Having examined the case, the Tribunal can find no evidence to support the claims by the Complainant that additional funds are owed or, that there was breach of contract.
2. The Tribunal contends that The Complainant's request for six weeks unpaid leave on June 18th, 2021, and subsequent resignation on June 23rd, 2021, negated any need for the Respondents to provide a payment in lieu of notice.
3. The Tribunal contends that the documents submitted by both the Respondents and Complainant clearly show that the schedule changes and accommodations made were done so mutually.
4. The Tribunal does not agree that the Respondents are due funds from the Complainant.
5. The Tribunal orders the sum of \$453.32 (Argus Rebate) and \$35.92 (Social Insurance deduction) be paid by the Respondents to the Complainant no later than February 11th, 2022.
6. The Tribunal contends that the Respondents are not under any obligation to accommodate or make allowances for the presence of the Complainant's children when the Complainant was performing her work duties.

Determination and Order of the Tribunal

1. Having considered the oral and written evidence, it is the Determination of this Tribunal that:

- i) The claim against the Respondents for Reduction of Work hours is without merit and is herewith denied.
- ii) The Complainant is due the sum of \$489.24 which shall be paid by the Respondents in full no later than February 1st, 2022.

2. The Tribunal makes no further Order in this matter.

The Parties to this Hearing have acknowledged that the Determination and Order of this Tribunal are final and binding. Any party aggrieved may however appeal to the Supreme Court of Bermuda on a point of law.

Dated: January 25th, 2022

Signed  Ms. Kelly Francis (Chair)

 Ms. McKeisha Smith (Panelist)

 Mr. Eugene Creighton (Panelist)