

IN THE MATTER OF THE EMPLOYMENT ACT 2000 BEFORE THE EMPLOYMENT  
AND LABOUR RELATIONS TRIBUNAL (the "Tribunal")

BETWEEN

Complainant

AND

Defendant

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DECISION

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Hearing Date: 3<sup>rd</sup> March 2023

**Present:**

John Payne, Tribunal Chairman  
Kelly Francis, Tribunal Member  
Paget Wharton, Tribunal Member

, Employee

, co-owner

, co-owner

Nakia Thompson, representative for the Owners

1. This matter was referred to the Employment & Labour Relations Department on 21<sup>st</sup> October 2022 and to the Tribunal on 20<sup>th</sup> December 2022
2. The Parties submitted statements from witnesses however these were not sworn.

**Issue**

3. The Complainant is seeking redress for unfair dismissal under section 40 of the Employment Act 2000

### **The Hearing**

4. The Chairman opened the Hearing by offering the Parties an opportunity to resolve the matter without assistance from the Tribunal. The Parties did avail themselves of the offer but after a brief recess failed to come to a resolution.
5. The Hearing started proper with the Chairman indicating that he was related to the child of one of the Owners but was not familiar with nor had any contact with either the child or the parent.

### **History**

1. The Employee was hired by the Employer as a full-time Office and Gym Manager in September 2018. She had previously been employed on a part-time basis.
2. There was an incident on 24<sup>th</sup> September 2022 between two clients and the Employee regarding compliance with the mask-wearing protocol being enforced by the establishment. Both clients wrote to the Employers to complain about the interaction with the Employee.
3. The Employee was not satisfied with how Management handled the matter, believing they took the side of the clients rather than side with her as their Employee. The Employee expressed feeling great “disgust” over this and stated she needed time off to clear her head.
4. The Employee took two days off (September 27<sup>th</sup> and 28<sup>th</sup>) following the incident and it is alleged that it was without permission. She returned to work on 29<sup>th</sup> September 2022.
5. The Employee contends that she informed the Employer of her intention and ensured her shifts were covered by co-workers.
6. The Employee was not compensated for those two days.
7. A meeting was held on 5<sup>th</sup> October 2022, between the Parties when it is claimed that an increase in wages was asked for by the Employee. This was rejected by the two Owners.
8. During the Meeting voices were raised and it is alleged that Co-Owner MD, when attempting to leave the room was “chest bounced” by the Employee. The Employee strongly denied this allegation.
9. The Employer advised that a police report was filed. A copy of the document was not submitted in evidence. Upon questioning by the Tribunal, it was apparent that while a complaint was filed, there was no further action taken, the Employer could not state the date the complaint was made nor, was clear regarding the purpose. **As such, the Tribunal did not place any weight on this claim during their deliberations.**
10. A letter of termination dated 16<sup>th</sup> October 2022 was left on the kitchen table in the staff room, address to the Employee.
11. The Letter indicated that the Employee was terminated as of Monday 31<sup>st</sup> October 2022 with immediate effect for Serious Misconduct according to Sections 25(a) and (b) the Employment Act 2000.
12. The grounds were:

1. On Monday, September 26<sup>th</sup> 2022 you left the Job without informing Management or other members of staff and returned two days later without a valid reason or explanation.
  2. On Wednesday, October 5<sup>th</sup> your behavior towards the owner of the business during the meeting became abusive, threatening and disrespectful which is considered crossing the line.
  3. Your decline in behavior towards Management has become unacceptable and unbearable and cannot and will not be tolerated any longer.
13. It is noted by both the Employers and the Employee that there was no discussion held regarding the termination letter and it was business as usual during the notice period although relations were strained and communication between the Employee and MD was minimal.

### **Deliberations**

1. The Tribunal have heard the representations from both Parties and considered the three reasons given by the Employer to ascertain whether they met the conditions of Section 25 of the Employment Act 2000: Summary Dismissal for Serious Misconduct as alleged in the Termination letter.
2. Summary dismissal for serious misconduct states: *An employer is entitled to dismiss without notice or payment of any severance allowance an employee who is guilty of serious misconduct—*
  - (a) *which is directly related to the employment relationship; or*
  - (b) *which has a detrimental effect on the employer's business,*

*such that it would be unreasonable to expect the employer to continue the employment relationship.*
3. During questioning by the Tribunal, the Employers indicated that the Employee was responsible for coverage and that she normally did not consult with them prior to approval being granted.
4. In this instance the Employee did ensure that her shifts were covered and came in for a period to ensure that coverage was maintained.
5. The Employer admitted that the Employee was owed for the hour and a half worked.
6. **The Tribunal does not accept and the Employer agreed that the Employee did not violate nor was guilty of offending bullet point 1 in the letter of termination.**
7. During the evidence both Parties agreed that the meeting on the 5<sup>th</sup> of October 2022 was not cordial and that it got heated.
8. The Employee in her evidence did state that she refused to leave the meeting when told by MD to do so. In her written statement she wrote, *"I answered back in a stern voice, I am not going anywhere and sat back down."*

9. The Employee denies behaving in any manner that could be interpreted as aggressive or threatening.
10. During her evidence both verbally and written, the Employee indicated her frustration with what she claims was the general behavior of MD, stating “it always about her” and accused MD of having “adult tantrums”.
- 11. The Tribunal is of the view after hearing and observing the interaction between the Parties that the relationship between the Employee and MD was toxic and that the relationship was no longer conducive to the good operation of the business.**
- 12. It is noted that in the Termination letter no reference was made to the alleged physical contact. Thus, no weight was given to this allegation.**
- 13. It is noted that the Tribunal could find no evidence that the Employee’s behaviour was considered abusive or threatening as stated in the Termination letter.**
14. The Tribunal sought clarification for why if the Employee was summarily dismissed, she was given two weeks’ notice and permitted to continue working. In response, the Employers indicated that they had never terminated an employee in the years of operation and were unclear of the correct protocol and further, there was a level of compassion towards the Employee whom up to that point they had a good relationship with so they believed that was the correct thing to do.
15. The Employers indicated during evidence that the reason for the termination had nothing to do with the incident involving the two clients, rather it was the conduct displayed during the October 5<sup>th</sup> 2022 meeting that led to the decision to terminate. This was stated several times under questioning by members of the Tribunal.
14. Section 18, Termination of Employment states: *An employee’s contract of employment shall not be terminated by an employer unless there is a valid reason for termination connected with— (a) the ability, performance, or conduct of the employee; or (b) the operational requirements of the employer’s business*
- 15. The Tribunal noted to the Employers that the placing of the termination letter on a table in the staff room is not good employment practice.**
16. While consideration possibly could have been given to applying the conditions of Section 24, Disciplinary action, the Employers did not use this section.
17. The Tribunal is satisfied that the conditions of termination under Section 25 were not met.

## **Determination and Order**

The Tribunal has considered the representations of the Parties and considering the requirements of the Legislation has determined:

1. The Employers failed to address the performance issue in accordance with the guidance outlined in the Employment Act 2000.
2. The Employee was not accurately terminated based on the provisions of Section 25 of the Employment Act 2000.
3. The giving of 2 weeks' notice complied with the requirements of Section 20 Notice period.
4. Having received 2 weeks' notice of termination the Employee was not unfairly dismissed.
5. No further Order is made.



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John Payne  
Tribunal Chairman



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Kelly Francis  
Tribunal Member



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Paget Wharton  
Tribunal Member