

IN THE MATTER OF EMPLOYMENT & LABOUR RELATIONS TRIBUNAL

BETWEEN

Claimant

AND

PREMIER CONTRACTING BUILDING SUPPLIES LIMITED

Defendant

DECISION

Date of Hearing: 10th March 2025

1. The Claimant complained that he had been unfairly dismissed from his employment with the Defendant on 22nd November 2023. The Defendant's position was that the Claimant had been fairly dismissed as he had stolen items from the Defendant.
2. The Claimant was represented by Mr. Marc Daniels of Marc Geoffrey Ltd. The Defendant's owner, Mr. Sanz Pearman, appeared on behalf of the Defendant.
3. The Claimant and Mr. Pearman had not only a lengthy employment relationship but also a strong personal relationship of 27 years. Mr. Pearman referred to the Claimant as "literally like a son to me" and the Claimant readily agreed that Mr. Pearman had been extremely supportive of him throughout his life and acknowledged his gratitude to him.
4. Both the Claimant and Mr. Pearman gave evidence in person at the hearing on 10th March 2025. Both provided full written accounts in their complaint and defence, all of which have been considered in reaching this decision.
5. This decision is in more summarized form than usual as the Tribunal found that it was more straightforward to reach a decision in this matter than is typically the case with unfair dismissal complaints.

6. As already mentioned, there was no question that Mr. Pearman had supported the Claimant significantly throughout his life, providing him with employment for most of the time since 1997 and continuing health insurance for him for a period when he was unable to work due to a serious health condition. After working for another employer during 2017 and 2018, at the Claimant's request, Mr. Pearman then re-employed the Claimant from January 2019 until the dismissal on 22nd November 2023.
7. Whilst Mr. Pearman was very supportive of the Claimant, he stated that he also had developed concerns about the Claimant's work ethic. These concerns amounted to spending too much time on his phone and not working consistently during the day. He had also developed suspicions that the Claimant had taken work materials without paying for these. Mr. Pearman explained that he was upset at how needless this was as he offered all his employees the materials at cost or lower and had been very generous to the Claimant in particular in the past. For instance, he had on several occasions given loans or payments to the Claimant to assist him with his personal life when the Claimant was struggling to pay for school fees, his payment instalments on his car or needed advances on his wages for his wedding and honeymoon in 2023. By 2023, Mr. Pearman had come to view the Claimant as having expensive tastes and taking advantage of their personal relationship. His more jaundiced view of their relationship and the Claimant was an undeniable influence in Mr. Pearman's decision to dismiss the Claimant.
8. The Claimant's position was that he recognized the kindness and generosity shown to him by Mr. Pearman over the years, but he strongly denied that he had ever been dishonest or could not account for any materials that he had used for the project at his home that he had undertaken in 2023. It was these recent allegations that formed the basis for the dismissal. The Claimant was very concerned at the fact that he had been "brandished a thief" when he had not stolen anything. This provided the main motivation for his pursuit of the claim for unfair dismissal: to clear his name.
9. Whilst evidence was given as to the past years of the relationship and some incidents during that time, the fairness of the dismissal was dependent on the evidence available to support the decision to dismiss in November 2023.
10. The two key allegations against the Claimant were that he removed flooring and bi-fold doors from the Defendant for his own home without paying for these. There were

additional allegations that PVC fencing and 4 one-gallon tins of paint were taken without payment as well and some 2 x 4. However, the main reliance was on the flooring and the bi-fold doors.

11. As confirmed in *Raynor's Service Station v Earlston Bradshaw* Civil Jurisdiction Appeal No. 12 of 2016, the test when assessing a dismissal for serious misconduct is that it is for the employer to prove the reason for the dismissal and, if they fail to do so, then there shall be a conclusive presumption that the dismissal was unfair. Further, deciding whether misconduct potentially justifies summary dismissal requires circumstances such that it would be unreasonable to expect the employer to continue the employment relationship. The factors set out in Section 24 of the Employment Act 2000 also ought to be considered when assessing whether summary dismissal would be a reasonable penalty. Finally, the focal point under Section 25 when considering serious misconduct is when the Tribunal makes its decision on the evidence before it (rather than the time the decision was made by the employer).
12. At the time of both the decision to dismiss and at the Tribunal, the Defendant primarily relied on information that he had been told by co-workers and his own ability to detect when the Claimant was lying to reach the decision to dismiss the Claimant.
13. In respect of the flooring, the Defendant explained that a colleague, Stephen Davis, had seen that flooring was missing and this colleague had been told by Norette Simmons, Project Sales Manager, that the Claimant had loaded it by himself and printed off an old invoice.
14. In relation to the bi-fold doors, another colleague, Michael Rodrigues, had noticed that some bi-fold 6-panel doors were missing from the Defendant's warehouse. (He also noticed that the 4 paint cans were missing.) Mr. Rodrigues then spoke with another employee, Steven Barbosa, who confirmed that he had hung some bi-fold 6-panel doors for the Claimant at the Claimant's home. Mr. Rodrigues also noticed when he was attending the Claimant and his wife's house that there was PVC fencing which only the Defendant brought into the island.
15. Mr. Davis and Mr. Rodrigues informed Mr. Pearman of what they had seen and heard. Mr. Davis also told him that the Claimant had charged out flooring, but brought back the same invoice to use to get more flooring.

16. Mr. Pearman on hearing of this asked his accounts department to check what had been charged out by the Claimant. He confirmed that he had discovered that some items were charged out and that the Claimant and his wife did use both of their credit cards occasionally. However, Mr. Pearman's belief was that the charges amounted to "nowhere equivalent" to what was in the Claimant's property.
17. Based on the information received, Mr. Pearman confronted the Claimant on 21st November 2023 and alleged that he had stolen items from the business and referred to the missing bifold doors. The Claimant denied that he had taken anything. Mr. Pearman, however, stated that he could "see the look in his eyes and the shaking of his hands" and because he knew the Claimant well, interpreted this as guilt. No decision was taken that day.
18. On the following day, the Claimant came to see Mr. Pearman again. The Claimant states that he handed to Mr. Pearman a receipt for purchasing bi-folds and that Mr. Pearman tossed it to the side saying, "Well, what about the other stuff?" The Claimant states that Mr. Pearman referred to the Claimant always being on the telephone and also stealing time. The Claimant protested that he was not. However, according to the Claimant, Mr. Pearman made his decision to dismiss and stated, "If I'm wrong, I'll have to live with that."
19. Mr. Pearman's version of that meeting was that he could see the guilt in the Claimant's face when he came in after having obviously had a sleepless night. He stated that he asked the Claimant twice about the bi-fold doors, giving him another chance to tell the truth, but that the Claimant denied that he had taken them, stuttering "No, no, no". Mr. Pearman stated that had the Claimant admitted to taking them without paying, he would have given him another chance.
20. The Tribunal prefers the Claimant's version of this meeting that he did provide an invoice which was put aside by Mr. Pearman. This is because although that receipt was no longer able to be produced, evidence of a payment in January 2023 was shown set out in the bank statements provided by the Claimant. The description of Mr. Pearman saying "If I'm wrong, I'll have to live with that" also tallies with Mr. Pearman's own account that he could see that the Claimant was guilty based on how he reacted, having known him since he was young.

21. Neither Mr. Rodrigues or Mr. Davis were present at the Tribunal to give evidence and no signed statements were provided by either of them to verify their account. At the time of the dismissal, it is clear to the Tribunal that an inadequate investigation had been carried out by the Defendant, the Claimant's attempt to provide proof to address the allegations against him had been ignored, and no opportunity was given to the Claimant to address the other allegations against him.
22. There was, for instance, no apparent attempt by Mr. Pearman to verify by attending the Claimant's home (or seeking photographic evidence from him) how many bifold doors had been used in his home or the extent of the flooring in the home and thereafter compare this against the receipts that could have been provided by the Claimant or obtained by verifying purchases with his own account team.
23. Without having undertaken a proper investigation, nor allowed the Claimant a fair opportunity to respond to the allegations against him, the procedure followed was unfair. The decision reached to dismiss for theft was also unsupported by sufficient evidence as it was reliant on the suspicions of Mr. Rodrigues and Mr. Davis and, to put it frankly, the "gut reaction" of Mr. Pearman that the Claimant was lying.
24. At the Tribunal hearing, Mr. Pearman was not oblivious to these potential failings in fair process. He accepted that there may not have been the paperwork or evidence presented to the Claimant or the Tribunal to support his position, but that sometimes it "came down to principles" and that the Claimant knew in his own conscience what he had done.
25. Mr. Pearman stated that he was prepared to accept the decision of the Tribunal but wanted the Claimant to hear what he had to say. Mr. Pearman was of the view, understandably to some extent, that after all that he had done for the Claimant, he could not believe that the Claimant had brought him before the Tribunal. That was the essential message that he wanted the Claimant to hear.
26. Whilst it was clear that at the time of the decision to dismiss, there was insufficient proof of any finding of serious misconduct, at the Tribunal, Mr. Pearman did seek to explain why the various receipts and bank statements showing payments to the Defendant for the flooring and bifold doors, and Pembroke Paint for the paint, provided by the Claimant in his complaint fell short of showing that he had paid for all items. Although he accepted that purchases had been made for the flooring, paint and doors, Mr. Pearman alleged that

the flooring purchased of 8 boxes (\$760) for 192 sq ft amounted to less than the total flooring that was undertaken at the Claimant's home that consisted of another 22 boxes or 472 sq ft. This was based on what he had been told by the person who had installed the flooring, a Mr. .

27. The Claimant agreed that Mr. had laid flooring in the upper apartment as well as the lower apartment (which had required 9 boxes), but was adamant that he had paid for the additional flooring by cash. This was why there was no proof of this payment by way of bank statements, nor faced with this more specified allegation by Mr. Pearman at the hearing, could he produce any receipt.
28. On this issue of the additional flooring, the onus was on the Defendant to prove that the flooring was taken but not paid for. No such proof was provided by way of reference to inventory or witness evidence from colleagues that the Claimant had removed these items without payment. In the circumstances, the Tribunal is willing to accept that the Claimant was telling the truth that he paid for the additional flooring by cash payment.
29. The further evidence relied upon by the Defendant collated after the decision to dismiss was another unsigned statement by a colleague, Allan Wilkinson. Mr. Wilkinson's evidence was that on 7th December 2023, he spoke with the Claimant about him being accused of theft. He alleged that the Claimant told him that he was not a thief, but that it was a possibility that some items that were taken may not have been charged out to him. This could be an easy fix as they could just be charged to him.
30. The Claimant's account of the conversation was that he told Mr. Wilkinson that he was unsure of the grounds for being let go. He denied that he ever mentioned that he had taken some things. He only said that he was aware of accusations about the bifold doors and that if anything had been overlooked, there could have been an opportunity to allow him to pay for this as he and Mr. Pearman had that kind of relationship.
31. With Mr. Wilkinson not being present to give his evidence, the Tribunal prefers the Claimant's account of the conversation which does not include any admission by him. The conversation only goes to show again how if the conversation between the Claimant and Mr. Pearman had taken a different turn either on 21st or 22nd November 2023 with Mr. Pearman presenting evidence of his concerns and the Claimant being given the opportunity

to respond with evidence of his payments, that dismissal would likely not have been the outcome.

32. As the allegations relating to the PVC fencing, paint and 2 x 4 were not primarily relied upon as evidence to support the decision to dismiss, we will deal with these briefly. Having reviewed the evidence provided by the Claimant relating to payments in respect of these items, we accept that these items were paid for by him.
33. Whilst Mr. Pearman's approach towards a prodigal son to whom he was not prepared to extend open arms any longer was understandable in that father/son context, it was unacceptable in the employer/employee context. The Tribunal therefore finds that the Claimant was unfairly dismissed for the failings of investigation, opportunity to reply and lack of evidence to prove that serious misconduct had occurred as identified above.
34. Since his dismissal, the Claimant was able to find alternative full-time employment with on 2nd January 2024 at a higher wage and so does not seek any order of reinstatement or reengagement as his remedy, but only compensation. Whilst the loss sustained by the Claimant was limited to only 5 weeks' pay at most (as he obtained temporary work in December 2023 as well), the Tribunal are obliged to have regard to Section 40(5) of the Act.
35. As the Claimant was employed for 4 completed years of continuous employment at the time of his dismissal, by Section 40(5), the amount of compensation ordered to be paid by the Defendant to the Claimant shall be not less than 16 weeks' wages. This is based on the Claimant being entitled to receive 4 weeks' wages for each completed year of continuous employment by this Section.
36. The Defendant should therefore pay the award of 16 weeks' wages to the Claimant within 30 days of this Decision.
37. The parties to this Hearing are reminded that the Determination and Award of this Tribunal is binding.
38. Any party aggrieved may appeal to the Supreme Court of Bermuda on a point of law.

Dated this 2nd day of April 2025

C.J. Rothwell

Craig Rothwell
Chair

Betty Christopher

Betty Christopher
Deputy Chair

Orin Simmons

Orin Simmons
Member