



VIRGIN ISLANDS

LABOUR CODE, 2010

(No. 4 of 2010)

IN THE LABOUR ARBITRATION TRIBUNAL

Case No. BVILAT2023/028

BETWEEN

FERNANDO JR. REBLORA

COMPLAINANT

AND

KISS THE JEWELER

RESPONDENT

REASONS FOR DECISION

BEFORE: **Samuel Jack Husbands**, Chairperson, **Yvonne Crabbe**, and **Kamika Forbes**, Arbitrators

HEARING ON: The 18th day of July 2024

DECISION ON: The 11th day of December 2024

IN ATTENDANCE: (1) Fernando Jr. Reblora, the Complainant
(2) Kevis Hughes, Manager of the Respondent

ADDITIONALLY: (3) Malisa Ragnauth-Mangal, as Secretary to the Tribunal

Summary of the facts

1. This not a dismissal case. The Complainant voluntarily resigned from the Respondent's employment. He has not alleged he was constructively dismissed. In his Dispute Claim Form, he claims he was not paid "regularly" during the period February to July 2019 and he was not paid at all from August to December 2019 and from January to March 2021. He

also claims that amounts were deducted for payroll tax, social security contributions and not paid over to the relevant agencies.

2. The Complainant was employed pursuant to a contract dated 4 April 2019. The contract provided that his employment was to commence on 8 April. Despite this provision, the Complainant did not actually begin work until May 2019. He submitted a resignation letter dated 6 May 2021 notifying the Respondent that his resignation would take effect immediately. His salary was \$2,400 per month payable in instalments on the 15th and 30th days of the month and subject to the statutory deductions for payroll tax and Social Security and National Health Insurance contributions.
3. The Complainant filed a Dispute Claim Form dated 10 March 2021 and a Reply dated 16 February 2024. He stated in the Reply that the amount due to him for unpaid salary was \$4,853.00. He did not file a witness statement despite being ordered to do so. In the interest of saving time the Tribunal allowed the Reply to stand as the witness statement. It was supplemented by his oral evidence. Proceedings in this manner would not, in our view, have caught the Respondent by surprise. The allegations in his Reply formed the basis of his evidence.
4. The Respondent filed what can be considered a Response on 2 February 2024. It acknowledged its failure to make timely payments and that there were delays in producing documentation such as payslips. It is clear from the Response and from the evidence of Kevis Hughes, a manager and part-owner, that there was no malice on the part of the Respondent and that its failure to meet payroll was due to cash flow deficiencies.
5. A short witness statement of Mr Hughes was filed on 4 April 2024. Mr Hughes exhibited cheque stubs. He further stated the Complainant refused to complete certain tasks in breach of contract. In support of this allegation, he exhibited a list of the losses (at pages 40-54 of the bundle). No evidence was given substantiating the breach of contract or the amount of the losses. No counterclaim was made by the Respondent for damages or recovery of loss flowing from these alleged breaches of contract but, despite the absence of a counterclaim, the Tribunal allowed the evidence of the losses. In the end, this evidence was not supportive of any claim made by the Respondent.
6. It is clear from the cheques and payslips that the Complainant was paid more than he had accounted for. He did not have all the relevant material. He could not have kept accurate records. He said he was sometimes paid without being given payroll information. In at least one case. Mr Hughes said in one case a client paid the firm \$3,100 in cash for a job around August 2020. Mr Hughes said this cash was paid over to the Complainant in reduction of arrears of salary. No supporting documentation was produced. In any event, the Complainant denied receiving this payment. The payment is not supported by a receipt or any written memorandum. The case generally suffered from a lack of documentation.
7. The cheques and payslips tendered in evidence show the following:

- a. a payment of salary in July 2019 but the cheque stub is illegible, and we are unable to determine the amount of the cheque,
 - b. one week's salary of \$553.50 on 28 September 2019,
 - c. one week's salary of \$553.50 on 15 October 2019,
 - d. one week's salary of \$553.50 on 30 November 2019,
 - e. two weeks' salary of \$1,107.00 on 20 December 2019,
 - f. a cheque for \$1,033.80 dated 5 March 2021 which was dishonoured by the issuing bank
8. We are satisfied it is likely that the whole amount of salary and deductions for the two months January to the beginning of March 2021 is due. That alone is \$4,800. There is some difficulty calculating the amounts due for February to July 2019. We think it is more probable than not that all salary for that period was paid even if it was late or in irregular amounts. The Complainant claimed salary from February 2019 but the contract shows he could not have commenced employment before 8 April 2019. We cannot escape the conclusion that his assessment or recollection of what is due to July 2019 is unreliable.
9. Regarding unpaid salary for August to December 2019, the Complainant stated he did not receive any salary at all for this period. The Respondent has successfully contradicted this in part. It has produced evidence of payment for some months but there are gaps nevertheless. We are left with the impression that the Complainant was paid more than he remembered receiving but he is still owed some salary.
10. The Complainant has presented his case on the basis that only \$4,853.00 is due to him. As stated above, the arrears for the two months from January 2021 to the beginning of March 2021 alone is \$4,800. It is clear there is an undetermined amount due for 2019. We take this into account and allow the claim for \$4,853.00. This sum is meant to include the Complainant's own share of the statutory contributions.
11. The Complainant also seeks the Respondent's share of the statutory deductions. He has taken another job but is concerned there is a gap in his Social Security and National Health contributions which will affect his pension entitlement and his medical benefits. The Tribunal is not satisfied that it can order an employer to pay over these contributions to the relevant government agencies. It may be for the agencies themselves to take steps to recover the contributions.

Costs

12. The amount of \$4,853.00 was claimed by the Complainant in the proceedings before the matter reached the Tribunal. The Respondent persisted in its defence of the claim and has, due to the unavailability of the full set of its records, not only failed to beat that amount but has not significantly challenged it either. We consider this an exceptional reason under section 30(3) of the Labour Code for the award of costs. We assess costs at \$500.00.

Summary of order

13. The Tribunal makes the following orders:

- a. Respondent shall pay the Complainant \$4,853.00 for unpaid salary, and
- b. Respondent shall pay the Complainant \$500.00 on account of his fees and expenses for bringing this claim.

By Order
Labour Arbitration Tribunal



Samuel Jack Husbands
Chairperson



Yvonne Crabbe
Arbitrator



Kamika Forbes
Arbitrator