

**VIRGIN ISLANDS**

**LABOUR CODE, 2010  
(No. 4 of 2010)**

**IN THE LABOUR ARBITRATION TRIBUNAL**

**Case No. BVILAT2023/041**

**BETWEEN**

**WENDY ADOLPH**

**COMPLAINANT**

**AND**

**LAZARUS SERVICES LTD**

**RESPONDENT**

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**REASONS FOR FINAL DECISION**

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**BEFORE:** Samuel Jack Husbands Chairperson, and Rhonda Hodge-Smith,  
Arbitrator

**TRIAL ON:** 22 March, 25 April and 10 May 2024

**DECISION ON:** 3 April and 29 May 2024

**IN ATTENDANCE:** (1) Wendy Adolph, the Complainant  
(2) Kevin Parsons, director of the Respondent

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

**Procedural history and summary**

1. This is the final decision. On 3 April 2024 the Tribunal issued an interim decision in which we found the Respondent liable to pay the Complainant arrears of salary claimed and compensation for unfair dismissal. We assessed the amount of the arrears at \$10,582.04. We ordered the Respondent to pay the Complainant this sum with interest at 3% per annum from 14 June 2022 until 3 April 2024 and at the Complainant's request, we adjourned the issue of compensation for unfair dismissal.

2. The procedural history and facts are contained in our Reasons for Decision issued on 3 April. We will not repeat them here. We will state only those facts that arise for consideration on the assessment of the award of costs.
3. Neither Mr Parsons nor any representative of Respondent was present at the resumed hearing on 10 May although Mr Parsons had received the notice of hearing and acknowledged receipt. The Complainant was present. She stated she did not wish to pursue any further compensation.
4. One additional issue has arisen since we gave our decision on 3 April. It has come to the attention of the Tribunal that the Respondent, a company registered under the BVI Business Companies Act 2004, was struck off the Register of Companies and was dissolved as of 30 April 2017. The dissolution took effect pursuant to the statutory scheme triggered by non-payment of annual licence fees under section 213(1)(c) of the BVI Business Companies Act (BCA). We invited submissions from Mr Parsons about the effect of the dissolution of the Respondent.
5. We first considered section 215 of the BCA (as amended by the BVI Business Companies (Amendment) Act 2022) on the effect of striking off and dissolution. The following provisions are relevant:
  - a. section 215(1) provides that a struck off and dissolved company or a member or director shall not defend proceedings or act in any way with respect to its affairs, and
  - b. section 215(3) provides that the fact that the company was struck off the Register and dissolved does not absolve the company from liability that arose or would have arisen prior to its striking off or dissolution or that arises as a consequence of the company acting in contravention of subsection (1), nor does it prevent a creditor from making a claim against the company and pursuing the claim through to judgment or execution, nor does it affect the liability of directors or members.

It should be noted that the former section 215(3)(a) which provided that the striking off of a company does not prevent the company from incurring liabilities has not been extended to dissolved companies and has been repealed.

6. Section 215 was originally applicable to companies that had been struck off but not dissolved. Except for section 215(3)(a), it was extended to dissolved companies as of 1 January 2023 by the BVI Business Companies (Amendment) Act 2022 although there is a separate and longstanding regime for a stay in respect of claims and execution against companies in liquidation but not yet dissolved and barring claims against companies that have actually been dissolved.
7. The Respondent was dissolved before the Complainant's employment commenced. The period in which application could have been made to restore the Respondent to the register (by virtue of section 217(3) or 218(5) of the BCA (as amended in 2022) expired on 30 June 2023. The Complainant may have treated Mr Parsons as the principal "doing business as Lazarus Services Limited" or Mr Parsons may have been the agent of a non-existent

principal – see **Farley Health Products Ltd v Babylon Trading Co** (1987) Times, 29 July. There is no evidence one way or the other. We note that in **Jones v Owen** (2013, UKEAT/0091/13/RN) the UK Employment Tribunal allowed the amendment of proceedings to substitute as respondent the name of the person with whom the employee contracted for the name of a dissolved company.

8. We acknowledge that under section 215(1) the Respondent could not have defended the proceedings or act with respect to its affairs but that, though dissolved, it may incur liability if it acts with respect to its affairs in contravention of section 215(1). We were not called upon to resolve the conceptual difficulty of a dissolved company being liable for contracts entered into in its name by a former director and being sued to judgment or execution. Accordingly, we make no finding that Mr Parsons is personally liable.

### Costs

9. In our interim decision we gave reasons for the award of costs to the claimant. We took into account (i) section 30(3) of the Code which limits the award of costs to cases in which there are exceptional reasons which the Tribunal considers appropriate, and (ii) rule 47(3) of the Labour Code (Arbitration Tribunal) (Procedure) Rules 2020 (S.I. No. 98 of 2020) which contains a non-exhaustive list of circumstances that may be considered exceptional reasons. We considered that the Respondent had failed to file a Response or any evidence but at the trial conceded a fair amount of the arrears sought. In other words, there was no real dispute. The claim could have been fairly resolved far earlier and at far less expense. We are prepared to consider this an exceptional circumstance.
10. The Complainant was self-represented. It appeared that she spent much time preparing the case and she did attend the various hearings. Her main disbursement would have been arbitrator fees. In the circumstances we award her costs of \$1,000.00.

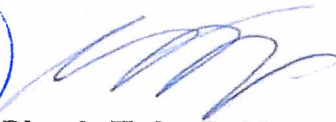
### Summary and order

11. In addition to the orders made on 23 April 2024 the Tribunal orders the Respondent to pay to the Complainant her litigation expenses of \$1,000.00.

By Order  
Labour Arbitration Tribunal



**Samuel Jack Husbands**  
Chairperson



**Rhonda Hodge-Smith**  
Arbitrator