IN THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL

BETWEEN

Claimant

AND

Respondent

DECISION

Date of Hearing: Monday 6th May 2024

1. The Claimant was employed by the Respondent as Chief Operations Officer from 23rd August 2021 until his termination of employment in the last week of November 2021. The Claimant's main complaint was that the Respondent unfairly dismissed him, and he seeks payment of his contractual 30 day notice period and compensation for his unfair dismissal in the maximum amount of 26 weeks' wages.

2. The Claimant also claims for the cost of his repatriation flight to the US in the amount of $640.85, his unpaid vacation pay of 4.5 days amounting to $2,336.53 and payment of the wages held back from him under a "Holdback" provision in the amount of $2,813. He acknowledges that he owes to the Respondent the amount of $304.77 by way of a loan for auto insurance.

3. The Respondent denies that the Claimant was unfairly dismissed and so disputes that the Claimant is entitled to any compensation award for this, or notice pay. The

Respondent accepts that it owes the Claimant the holdback amount of $2,813 and the cost of the flight ticket of $640.85, but denies that the Claimant is entitled to any vacation pay. The Respondent claims that the Claimant owes the amount of $1,070 for an electric car rental loan and reimbursement of an overpayment of salary in the amount of $2,918.10. The Respondent also seeks the recovery of its legal fees of $9,863.10 incurred in order to obtain the return of the company vehicle from the Claimant following the termination of his employment.

4. The main issue to be determined by this Tribunal is whether the Respondent terminated the Claimant's employment during the probationary period of 90 days that applied to his employment in accordance with his Statement of Employment dated 23rd August 2021. This is because upon review of the circumstances leading to his dismissal, which will be discussed below, it is clear that whilst the actions of the Claimant fell short of meriting dismissal were his probationary period to have come to an end, if he was dismissed during his probationary period, then the low threshold required to meet the fair dismissal of a probationary employee was met.

5. The parties first met after the Respondent used an employment agency to search for a highly qualified candidate for the role of COO and the Respondent was introduced to the Claimant in March 2021. An offer of employment was made by letter dated 11th March and this was accepted by the Claimant on 13th March 2021. In the period between March and August, there were various phone calls and Zoom interactions between the owner and Executive Chairman of the Respondent, Dr. A, and the Claimant.

6. The offer letter of 11th March outlined the basic terms and the formal Statement of Employment was provided to the Claimant at the start of his employment on 23rd August. This was shortly after he arrived in Bermuda on 20th August. The Claimant alleged that the Respondent had deliberately withheld important information about the terms of his employment from him, waiting until he resigned from his position in the US and moved to Bermuda. This information about which he complained was the Holdback provision keeping his first 2 weeks of salary to be paid at the end

of his employment to ensure that he gave proper notice. The other information was that he was to be held personally responsible for the cost of an electric car beyond the provision of an initial rental cost of $2,456. The Claimant complained that had he known that his first 2 weeks' wages were going to be held back earlier, he would have saved funds in the months before his arrival. He also considered that the Respondent should have made clear to him that it was not straightforward to obtain a driving licence in Bermuda as that would have alerted him to the additional cost of the electric car rental if, as turned out to be the case, he was not able to pass the driving test and obtain his licence within the first few weeks of employment.

7. Given that the Statement of Employment was a very detailed document in comparison to the 1 page offer letter and that key contractual details such as wage, bonus, relocation package, rental stipend, provision of car, vacation, sick leave and medical and dental insurance were included in the offer letter, alleging a deliberate withholding of information was unfounded, but the Tribunal acknowledges that the Holdback provision would have come as an unwelcome surprise. However, the Holdback was ameliorated to some extent by the fact that this exact sum was offered as an interest free loan if requested by the Claimant to be paid by the Respondent in the first month's salary and repaid in equal 50% instalments in October and November 2021. The Tribunal disagrees that there was any deliberate withholding of information in relation to the ease of obtaining a driving licence. This is typically something that an employee new to Bermuda has to research and manage themselves. In any event, as the Claimant stated, although these provisions were an inconvenience and stuck out as a red flag to him in his view (perhaps coloured by what happened subsequently), there were not of such gravity that the average person would consider quitting.

8. Unhappily, there was also an initial red flag appearing on the Respondent's side at an even earlier stage when the Claimant in an email on 20th August responded to an offer by an employee of the Respondent to provide him with a list of provisions for his arrival. Top of a short list of 4 items was a "Yellowtail Chardonnay (white

wine)" to which Dr. A on seeing this gently replied, "Hi [Claimant's name], I am not sure that the Chardonnay should have been on this list. (Surely not at the top of the list). It is not [Employee]'s business what you drink. Not a big thing but given what we are dealing with.... Travel safely and stay well."

9. The first 90 days of the Claimant's employment were a period during which, as Dr. A. stated in an email towards the end of the period on 12th November, "We are continuing to search for a mutual rhythm." Ultimately that rhythm was never found, in fact matters became very discordant towards the end, but that is not to say that there were any acts of misconduct or serious unsatisfactory performance by the Claimant. Instead, there were a number of elements of the Claimant's performance and decision-making that gave the Respondent justifiable reasons to consider that in the probationary context, the Claimant ought to be dismissed by reason of his performance and/or the operational requirements of the business.

10. Not challenged by the Claimant was the allegation by Dr. B, the Medical Director of the Respondent, that he was perpetually tardy. Although the Claimant challenged the fact that he wore a hat and boots to work, he did not contest that he was often in jeans. This was contrary to the Employee Handbook which stated that "Management employees are expected to dress in accepted business tradition that reflects the image the Company seeks to project." The Claimant also accepted that he did not ensure that he met with Dr. B frequently, requiring that Dr. A reiterate by email on 10th October 2021: "Since I have discussed these issues with you in the past, I will not be long in this communication. 1. Please meet with Dr. B ONCE WEEKLY." The Claimant was also criticized that he did not walk about the office on a regular basis or have frequent interactions with staff but instead remained behind closed doors in his office. Dr. B alleged that the Claimant admitted that he probably came out of his office around once daily which was denied by the Claimant who stated that he said it was "at least once daily". Nonetheless, the Tribunal accepts that this lack of visibility to staff was also an issue.

11. The Respondent provided various emails showing minor mis-steps by the Claimant such as contacting outside entities (twice) for information rather than obtaining it within the organization, considering inviting prospective candidates to Bermuda for a 'look' at the Respondent's expense, missing agenda items for meetings, not including attachments to emails, not including all management team members as recipients and misunderstanding the correct procedure to follow via Bermuda Immigration for a candidate.

12. There were then other emails providing examples of where the Respondent had concerns about the Claimant's decision-making and leadership. These included the Claimant offering the maximum hourly rate to a candidate immediately when given a range to negotiate, not taking the lead in the Christmas hours email to staff and requesting that he leave 3 days before and return 3 days after the Christmas break allowed to staff. None of the above examples were challenged by the Claimant.

13. The two examples which led the Respondent to question the Claimant's judgment the most were, however, disputed by the Claimant. The first involved a casual worker who had been working only 4 hours a week that was to join as a full-time employee to assist the Claimant with the project of converting paper medical records to electronic medical records. She had typed in her supervisor's signature when filling out an application to be added as an employee with the Department of Social Insurance and included a false (and much earlier) start date. This action by the employee led to her termination. The Claimant sought to defend the employee's actions as over-excitement due to her going full-time and believing it was her responsibility to file for her social insurance. The Respondent was understandably more troubled by the fact that she had filled out her supervisor's signature and backdated her start date by some distance. The Respondent was further troubled by the Claimant's judgment that she should not be held fully accountable for this.

14. As it is clear that the Respondent was right to be concerned about this prospective full-time employee's actions, the Tribunal accepts this as an example of a lack of judgment by the Claimant. It also demonstrates the clear difference in management

approach by the Claimant and the Respondent that meant that they were "out of sync" as Dr. A commented in his evidence.

15. The other example involved scathing criticism received by Dr. A from a prospective employee by email on 29th October 2021, not just in relation to the Claimant but also against Dr. A. The criticism against the Claimant was that he had invited the prospective employee and her husband to dinner and handed the bill to them to pay. The Claimant had also asked them to bring Romeo and Juliet cigars which cost $250. They also criticized the Claimant for talking about his wife and family and then inviting the waitress to the beach with them the next day. These criticisms were strongly denied by the Claimant who stated that the prospective employee had voluntarily paid the bill as it came whilst the Claimant was attending the rest room, and he was reimbursed the next day. The Claimant also vociferously denied that there was an invitation to the beach of any waitress, and it was the prospective employee who had offered to bring the gift to which he had responded.

16. In his questions to Dr. A, the Claimant asked whether the criticisms of Dr. A's actions were accurate, which Dr. A denied. These basically involved criticism that the prospective employee had been offered 50% of costs to visit Bermuda which had not been paid and a host of allegations relating to poor communication and disinformation. As this was a highly disgruntled prospective employee and the email was written in as scathing a tone as possible, the Tribunal accepts both Dr. A and the Claimant's evidence that its criticisms are likely to have been exaggerated and lacking in truth in respect of its contents.

17. Contrary to the new provision of Section 19(2) of the Employment Act 2000 required after the legislation's amendment on 1st June 2021, no mid-term review was carried out by the Respondent of the Claimant's performance. Nonetheless, there was not a lack of communication between the Respondent and Claimant as to their expectations and his performance and the Claimant frankly stated in his evidence that by November, it was apparent to him that "we were getting to the point that [Dr. A] did not like my management style".

18. Matters came to a head in a management meeting on Thursday 18th November with Dr. A and his wife, Mrs. A (the Chief Executive Officer), Dr. B and the Claimant present. By both the Claimant and Respondent's account, this was a very combative meeting with voices raised when the issue of the employee dismissed in relation to the social insurance form was discussed as well as the Claimant's dress amongst other issues. Following this meeting, Dr. A and his wife decided to give themselves the following day and weekend to reflect on the situation.

19. Whilst normally allowing such a "cooling off" period would be a wise step to take, the 90 day probationary period was about to end on Saturday 20th November. As Section 19(4) states, it is *during* the probationary period that a contract of employment may be terminated without notice. Therefore, to ensure that the Respondent abided by this provision and avoided any technical legal arguments about timing, if the Respondent intended to terminate the employment of the Claimant, the wise step would have been to do so on Friday 19th November.

20. That step was not taken. Instead, as is also understandable from a human if not legal perspective, the Respondent wanted to see if an amicable departure could be agreed with the Claimant. Therefore after working hours on Monday 22nd November, Mrs. A met with the Claimant and offered him the option of being terminated immediately at the end of his probationary period or to separate amicably at the end of the year. Nothing was provided to the Claimant in writing confirming his termination that day or setting out the proposal made to him.

21. On the following morning, Mrs. A sent an email to the Claimant asking at what time later that day the Claimant would like to continue the conversation. The Claimant replied that he needed more time to consider his position and should be ready to continue the discussion on Wednesday after 6pm. Mrs. A responded, "I am not sure what you mean. We need to speak asap. Recall that I terminated your employment on behalf of the Management Team. I gave you the option of immediate termination, or a private and confidential departure at the end of

December. Unfortunately, waiting until after 6:00pm on Wednesday is not an option available to us."

22. The Claimant then replied that same morning, "Hello [Mrs. A.] I will take the departure in December. What time to you want us to talk?" The Claimant's evidence was that he replied with this answer as he considered it was the best way to buy himself time to obtain legal advice. He stated that he had also realized at this point that the 90 day probationary period had come to an end over the weekend.

23. The Claimant then continued to come into work for the remainder of the week. During this time, he also obtained legal advice. On Saturday 27th November, he called Mrs. A to inform her that he needed to be paid severance. This resulted in Mrs. A sending an email stating, "I am writing to follow-up on your call today, wherein you proposed that we pay you severance. As I related to you on the call, that is not – nor has it ever been – an option. You were notified on November 22, 2021 per the terms of your Statement of Employment, that your employment is being terminated. You were further notified that there were either of two ways we could proceed – 1) amicably and confidentially by your departing for the Xmas break and not returning, or, 2) by immediate termination. Per your email below, you initially advised that you would amicably depart in December. However, you called this afternoon to say that you have lawyers who advised you not to settle amicably but to demand severance. You have left us with no choice. Effectively immediately, you are terminated…."

24. This sequence of events shows that from the Respondent's perspective they considered that notice of termination had been given to the Claimant on Monday 22nd November and the outstanding point to be agreed was the date of termination.

25. The first question to address is whether it was too late for the Respondent to give notice to terminate the employment of the Claimant within Section 19. The Respondent accepts that the 90 days ended during the weekend prior to Monday 22nd November and relies upon the Supreme Court decision of Gorham's Limited

v David Robinson [2022] SC (Bda) 39 App (13 June 2022) which held that it was reasonable for the employer in that case to wait for the probationary period to end if it occurred on a scheduled day off for the employee and then deal with the matter at the first available opportunity thereafter. The Court held that "For clarity, I do not find it unreasonable to deal with an end of probation matter at the earliest opportunity after the end of a probationary period based on satisfactory reasons for doing so. However, it should be noted that my view does not provide any approval whatsoever to any delayed attention to an end of probation matter without satisfactory reasons for such delay."

26. It is important to note that in that case the probationary period discussed was under Article 29 of the Collective Bargaining Agreement rather than Section 19 of the Employment Act 2000. This Article stated inter alia, "Employees will be engaged on a three month (90) days probationary period at their normal rate. During the period the Employer may terminate their employment with one (1) week's notice should the Employee's work performance not measure up to the standard required of his employment. A review of the Employee's performance shall take place at the end of this initial probationary period to determine their understanding of the position."

27. The reference to the review taking place at the end of the probationary period in Article 29 encouraged the Court to allow the flexibility to have this review occur at the first available opportunity should the employee be scheduled off work on his last day or days.

28. In contrast to Article 29, the Statement of Employment for the Claimant envisages no such flexibility but instead adopts the terminology of Section 19. It states, "Under any circumstances and irrespective of any other terms of this Agreement, it is understood that the first ninety (90) days of employment are Probationary. The Probationary Period may be extended beyond ninety (90) days depending upon your performance. Assuming satisfactory performance and after the Probationary Period is ended, you would be entitled to the following benefits:..... Termination

during Probationary Period During the Probationary Period, no notice will be required by the Clinics for immediate termination, and no payment will be due beyond the date of termination."

29. This reflects Section 19(4) which states, "During the probationary period (including any period of extension under subsection (3)), a contract of employment may be terminated without notice – (a) by the employer for any reason relating to the employee's performance review, performance, conduct, or operational requirements of the employer's business; or (b) by the employee for any reason."

30. Considering the above, it is the Tribunal's view that the decision by the Court in Robinson should be distinguished as it relates to a provision in a governing Collective Bargaining Agreement rather than Section 19. Instead the straightforward analysis should be whether the date of 22nd November is during the probationary period or not. This is the wording in both Section 19 and the Statement of Employment in this case. As the date of 22nd November is not during the 90 day probationary period, then the Claimant was not terminated within the probationary period and a fair dismissal under Section 19 was not affected by the Respondent.

31. If this Tribunal is wrong that Robinson can be distinguished but instead should be applicable, then the test to be applied following Robinson is whether there are satisfactory reasons for choosing to deal with the matter at the first available opportunity after the probationary period ended. This Tribunal's view is that satisfactory reasons should be tightly proscribed. The probationary period under Section 19 represents a careful balance between employer and employee interests. It is a time when an employee's position is very vulnerable and it is important that there should be certainty when this period comes to an end. It also provides a period during which an employer should have plenty of time (particularly with the option of extending the period being available under Section 19) to terminate an employee's employment without leaving this until after the last day of the probationary period.

32. In this case, the Respondent had a management meeting on Thursday 18th November in which the relationship between the Claimant and the Respondent, already strained by that time, reached breaking point when the meeting descended into a shouting match. That having occurred and with the knowledge that the probationary period was due to end on Saturday 20th November (or at least there should have been that awareness by the Respondent), there was no satisfactory reason why the matter of the Claimant's probationary employment could not have been dealt with on Friday 19th November. The reason offered that the Respondent wished to have time to "cool off" and consider matters in an effort to reach an amicable departure is insufficient in this Tribunal's view. Such a reason of allowing essentially further time for reflection could be used on any occasion and would introduce an unhelpful level of uncertainty for both employer and employee as to whether a probationary period has ended or not.

33. Having reached this conclusion that the termination of the Claimant was not within Section 19, then the notice of termination of the Claimant's employment, whether it occurred on 22nd November or 27th November, was unfair as the actions of the Claimant did not amount to serious misconduct under Section 25 so warranting immediate termination. Nor had the Claimant received any prior written warnings under Section 26 or 27 to enable him to be dismissed fairly in accordance with those sections.

34. In respect of his claim for unfair dismissal, the Claimant is therefore entitled to be awarded his 30 days' written notice required by his Statement of Employment and taking note of Section 20(2)(c) under Section 39 as well as a compensation award under Section 40.

35. As stated in Robinson (paragraph 66), the starting point is to calculate the amount of compensation pursuant to Section 40(5) which would give the number of weeks' wages an employee could be entitled to. As with Mr. Robinson, the starting point is that the Claimant is not entitled to any week's wages as he had not completed one year's employment.

36. The next step is to consider Section 40(4) so as to increase or decrease the amount of the award to a level that the Tribunal considers just and equitable in all the circumstances. Section 40(4) requires consideration of the loss sustained by the employee in consequence of the dismissal in so far as that loss is attributable to action taken by the employer and the extent to which the employee caused or contributed to the dismissal needs to be taken into account.

37. Robinson also confirmed, albeit in the context of the applicable Collective Bargaining Agreement in that case, that factors to consider also were the Respondent's right to extend the probationary period and the length of service of the Claimant. The Statement of Employment provided that the Respondent could extend beyond the initial 90 days and the length of service of the Claimant was only 3 months' duration. Both these factors strongly suggest that if any compensation award is made, it should be limited to that of a few weeks (if any). This is because if the probationary period had been extended, the Respondent could have terminated the employment of the Claimant within that period without notice and need only have had to pay for the few weeks' additional employment.

38. In respect of the short duration of employment, Section 40(5)(a) gives a guideline that those with no more than 2 complete years of continuous employment shall not receive less than 3 weeks for each completed year of service. It states: "(5) The amount of compensation ordered to be paid shall be not less than- (a) three weeks wages for each completed year of continuous employment, for employees with no more than two complete years of continuous employment". This suggests again an amount of only a few weeks' duration, even though it refers to a minimum not maximum amount.

39. This Tribunal is aware that in Colonial Group Ltd v Caesar [2021] Bda LR 24 at paragraph 33, the Court reviewed this sub-section and commented as follows: "Section 40(5)(a) prohibits an aggrieved employee from being awarded a sum less than 2 weeks of wages for each completed year of service. However, subsection

(5)(a) does not apply to any employee who worked for a period exceeding 2 complete years. So, on any formulation, the unfairly dismissed employee could not be awarded up to 26 weeks' worth of wages under this subsection. The maximum number of weeks wages which could apply to Section 40(5)(a) is 4 weeks wages…." This case was heard prior to the 1st June 2021 amendment increasing the number of weeks from two to three so the maximum would now be 6 weeks rather than 4 weeks in accordance with this interpretation. As the Court in Robinson adopted a different interpretation whereby Section 40(5)(a) provides for minimum amounts based on length of service only subject to the 26 week maximum, there are conflicting decisions on this point. Although the approach in Robinson appears to be more aligned with a straightforward reading of Section 40(5), this Tribunal bears in mind the Colonial decision in considering the appropriate level of the award.

40. We have reviewed the actions of the Claimant and found that whilst they did not substantiate a fair dismissal outside the probationary period, his actions would have merited a fair dismissal within the probationary period due to his performance or for the operational requirements of the Respondent's business. We also cannot avoid taking note of the fact that it was only due to an oversight in timing that the Respondent failed to dismiss the Claimant fairly within the probationary period and he would then have been left without any claim to a compensation award. The contributory conduct of the Claimant is therefore another factor that suggests a compensation award limited to a few weeks only.

41. The Claimant has asked for consideration of the maximum 26 weeks' pay award relying upon his loss being attributable to action taken by the Respondent. He relies firstly upon his allegation that there was a pattern of intentional opacity and deception when hiring foreign workers to Bermuda and offered an example that the Respondent only wished on another occasion to provide the information to the Department of Immigration that it required. As the Respondent instructed the Claimant to provide only the information required by the Department of Immigration, we do not agree that there are any grounds to criticize the Respondent

for this or any withholding of information in respect of the Claimant's own hiring (as already discussed above).

42. The Claimant also asks that account be taken of the fact that there was retaliation against him once he had sought legal advice on the options presented to him for the date of his termination. We do not accept that the decision by the Respondent to confirm the termination on 27th November was retaliation at all. The Claimant had initially indicated that he had chosen to agree to leave amicably at the end of December only to demand severance a few days later. The Respondent was entitled to respond to the Claimant's actions by clarifying that his employment would end immediately given that he had not, after all, agreed to a departure at Christmas 2021.

43. Finally, the Claimant alleges that the Respondent repeatedly engaged in unethical and unlawful business practices aimed at saving money which had an adverse effect on their employees and the potential to shortchange the Department of Social Insurance. However, this criticism was based on the mistaken assumption of the Claimant that the worker employed for only 4 hours was entitled to be insured under the Contributory Pensions Act 1970 and had not been. This reason is also not accepted by the Tribunal.

44. The final factor for the Tribunal to consider is the loss sustained by the Claimant. The Claimant confirmed that he had been unable to find new employment since his employment ended. It had been especially difficult to explain a 3 month period of employment to potential employers. He stated that he had been engaged on a few projects which were yet to yield financial rewards. Therefore he had received no regular earnings from employment since November 2021.

45. Apart from the final factor that the Claimant has not been able to find regular income since his termination of employment, the remaining factors point to an award of only a few weeks. Taking into account all the above circumstances, the Tribunal considers that a compensation award of 4 weeks' pay is just and equitable.

46. The remaining claims and counter-claims by the parties can be dealt with briefly.

47. The Respondent has agreed that it owes to the Claimant the Holdback amount of $2,813. This should be paid to the Claimant (subject to any lawful deduction of the employee portion of the payroll tax).

48. The Respondent has also agreed that it is responsible for the repatriation flight cost of $640.85. This should be paid to the Claimant.

49. The Claimant and the Respondent are agreed that the amount owed by the Claimant to the Respondent for "Loan B" is $304.77. This should be deducted from the amount to be paid to the Claimant by the Respondent.

50. The Claimant seeks his pro-rated 4.5 vacation days for the period he worked. The Statement of Employment provides an entitlement to "*Paid Vacation of 18 working days per year (after a successful Probationary Period) prorated in the first year, as approved by the Chair*". As the Claimant's employment has been found not to have been fairly terminated on 22nd November and he thereafter continued working until at least Friday 26th November, his probationary period is deemed to have been successfully concluded. The Claimant is therefore entitled to $2,336.53 (subject to any lawful deduction of the employee portion of payroll tax).

51. The Respondent has counter-claimed for the repayment of 6 days' net salary amounting to $2,918.10 ($486.35 net per day) for the working days of 23rd, 24th, 25th, 26th, 29th and 30th November on the basis that the Claimant's employment was terminated on Monday 22nd November. However, the Claimant's evidence was that he worked until Friday 26th November. This was unable to be contradicted by Dr. A, his wife or Dr. B. This also fitted in with the sequence of events whereby it was only after he demanded severance on Saturday 27th November that the formal letter of termination was sent confirming that his employment was considered terminated effective on 22nd November. As the Claimant worked until Friday 26th November, he ought to receive his pay for this period. The letter of termination stated that he

would be paid through until close of business on 26th November. If that is correct, then the Respondent is not entitled to any repayment of salary. If the Respondent did pay the Claimant for 29th & 30th November, then they are entitled to set off the overpayment of these days against the overall amount that is awarded to the Claimant in this decision.

52. The Respondent has also counter-claimed that the Claimant owes $1,070 for the electric car rental loan. This is in accordance with the following provision in the Statement of Employment: "You are personally responsible for the cost of rental of an electric car beyond the time and expense mentioned immediately above. However, in order to assist you in securing a 2-week extension of your use of an electric car, the [Respondent] will advance the cost of such rental as a loan ("Loan C"). You hereby agree to repay Loan C with an automatic deduction from your paycheck in month 5 of your employment (January, 2022)."

53. As the Claimant's employment did not last until month 5, the automatic deduction was not made. Loan C, however, remains owed by the Claimant and can be deducted by the Respondent from the award to the Claimant.

54. Finally, the Respondent counter-claims $9,863.10 for the legal costs that it says that it had to incur to compel the Claimant to return the company car to the Respondent. The Respondent alleges that the Claimant refused to return the car until 7th December which was 15 days after 22nd November (or 10 days after 27th November as the more relevant date as that is when he was required to return it both by letter on that date and because that was his actual date of termination, only notice having been given on 22nd November.)

55. The Statement of Employment required that the Claimant "agree that you will transfer the car back to the [Respondent] or their assignee immediately upon termination of your employment...." There is, however, no provision in the Statement of Employment that enables the Respondent to claim as a debt or otherwise against its own employee any legal costs incurred as a consequence of an

employee's breach of contract. The closest provision to this only allows the right to deduct certain sums owed during employment or upon termination and these are limited to overpayments and reimbursements of various kinds.

56. In the absence of any such provision, and in light of the fact that this Tribunal does not have any express power under the Employment Act 2000 to award legal costs against another party, and does not do so as a matter of long-standing practice, this counter-claim by the Respondent is denied.

57. It is left to the parties to calculate the exact amount owed by the Respondent to the Claimant taking into account the findings of the Tribunal above in respect of each of the claims and noted at paragraphs 34, 45, 47 – 51 and 53.

58. Either party that is aggrieved by this decision has the right to appeal to the Supreme Court on a point of law within 21 days after receipt of notification of this award.

Dated this 14th day of May 2024

C J Rothwell

Craig Rothwell
Chair

Edward Ball Jr.

Peter Aldrich