

**EMPLOYMENT & LABOUR RELATIONS TRIBUNAL DISPUTE FILED UNDER EMPLOYMENT ACT  
2000 (THE "ACT") PURSUANT TO PART VA SECTION 44B**

**VINCENT HILD**

**Claimant**

**v**

**Respondent**

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**OPINION & AWARD**

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1. A full hearing in this matter was held on December 15<sup>th</sup>, 2023. At the conclusion of the hearing, we found that the Claimant had been unfairly dismissed. We indicated that we would subsequently provide detailed reasons for our decision.
2. In summary, we find that:
  - a. Vincent Hild gave written notice by WhatsApp message terminating his employment with the Respondent on January 19<sup>th</sup>, 2023.
  - b. At the time that notice of his termination was given, the parties understood that Mr. Hild was providing more than the minimum 3 months' notice required to allow the Respondent time to find a replacement employee.
  - c. Mr. Hild's employment was to end on May 1<sup>st</sup>, 2023, the date upon which his work permit expired.
  - d. On March 3<sup>rd</sup>, 2023, just under two months before his employment was due to end, Mr. Hild was unfairly dismissed by WhatsApp message from

***Procedural Summary***

3. The dispute between the Claimant and Respondent was the subject of an April 28<sup>th</sup>, 2023 referral to the Employment & Labour Relations Tribunal ("the Tribunal"). A procedural hearing was held on June 9<sup>th</sup>, 2023, following which a timetable was set for the parties to submit their respective statements of case and evidence.

4. The substance of the directions order was unremarkable, except that the Tribunal ordered the final hearing to take place utilizing a hybrid (both in person and Webex) format given that one of the parties and several of the anticipated witnesses were located outside Bermuda.
5. At the final hearing the Claimant and Mr. [REDACTED] (a witness for the Respondent) appeared via Webex. Mr. [REDACTED] appeared on behalf of the Respondent in person. Neither of the parties were represented by counsel at the hearing, although the Respondent had been represented by counsel at the time of the referral.
6. The Claimant's claim summary was submitted to the Tribunal on about June 17<sup>th</sup>, 2023 and was followed by Respondent's Defense dated July 21<sup>st</sup>, 2023. The Respondent's Reply was submitted thereafter on about August 16<sup>th</sup>, 2023. Evidence bundles were submitted and exchanged prior to the December 2023 hearing.

#### ***Summary of the Evidence***

7. Given the parties were unrepresented at the final hearing, the Tribunal did not enforce strict pleading standards of the sort that would be expected in the Supreme Court where counsel are engaged, and to the extent their statements of case contained narrative summaries of fact that we viewed as germane to the dispute, that narrative was treated as forming part of the parties' respective evidence in chief. In addition, a number of witness statements and supporting exhibits were submitted by both parties for our consideration.
8. Not all the evidence submitted by the parties was relevant to the crux of the dispute. Relevant to our deliberations and to the outcome were the following:
  - a. Claimant's Summary of his Unfair Dismissal Claim dated June 17<sup>th</sup>, 2023,
  - b. Respondent's Defense dated July 21<sup>st</sup>, 2023,
  - c. Claimant's Reply to Respondent's Defense dated August 16<sup>th</sup>, 2023,
  - d. The contents of the Claimant's evidence bundle dated August 21<sup>st</sup> 2023,
  - e. The witness statement of [REDACTED] dated August 25<sup>th</sup>, 2023,
  - f. The witness statement of [REDACTED] dated August 24<sup>th</sup>, 2023,
  - g. Exhibits TB-1 to TB-10 referred to by [REDACTED] and [REDACTED] in their witness statements, and
  - h. The witness statement of [REDACTED] dated August 24<sup>th</sup>, 2023.

#### ***Inadvertent Disclosure of Privileged Material***

9. As mentioned above, the Respondent was initially represented by counsel. This is relevant because after the Claimant submitted his claim statement, counsel for the Respondent wrote to the Tribunal indicating that the Claimant had referred to various communications between the law firm and the Respondent that were privileged. There is no suggestion that the correspondence came into the possession of the Claimant through improper means, and instead it would appear to us that it was disclosed inadvertently.
10. Counsel for the Respondent asked that the Tribunal to disregard the privileged material, and to prevent the Claimant from relying upon that communication to advance his case. In support of the request the Tribunal was referred to the English Court of Appeal decision of *Michael Curless v*

*Shell International Limited* [2019] EWCA Civ 1710 which addressed the question of whether the UK Employment Tribunal was correct to strike out two paragraphs of a statement of claim on the basis that they contained matters protected by legal advice privilege.

11. As we understand it, the focus of the decision in *Curless* was on the application of the fraud exception, which can serve to defeat a claim of privilege in the case of an inadvertent disclosure. The decision is not directly relevant to the present dispute.
12. Ultimately, it became clear to the Tribunal that the correspondence cited as being privileged did not assist with resolution of the matters in dispute. As a result, there was no need for us to embark on an analysis of Bermuda law as it relates to the inadvertent disclosure of privileged material. To be clear, the existence and contents of the correspondence inadvertently shared with the Claimant formed no part of our consideration or deliberations.
13. After the deadline for submitting his evidence had passed, the Claimant asked for permission to submit additional evidence prior to the final hearing, which included a recording of a voice note as well as evidence from his brother, Françoise Hild. The Tribunal decided that it would reserve its decision on whether this additional evidence would be permitted until the final hearing, at which time both parties could make a case for whether the additional evidence ought to be admitted or disallowed. However, we were able to reach our decision without regard to this additional evidence, and no decision had to be taken on its admissibility.

#### **The Background information**

12. The uncontroversial facts are these:

- a. The Claimant signed an employment contract with the Respondent on about June 1<sup>st</sup>, 2021, pursuant to which he would be employed by the Respondent as Master Baker.
- b. The Claimant reported to Mr. [redacted] who is one of the Respondent's founders.
- c. Mr. [redacted] is the brother of [redacted] and a founder of the Respondent. He is not a silent partner and was someone Mr. Hild was familiar with in the operation of the bakery.
- d. At the time the Claimant began working for the Respondent, the Respondent's business was just starting up. Between June 1<sup>st</sup>, 2021 and early November 2021, the Claimant did not work full-time as a baker and instead carried out various activities to assist in preparing for the opening of the business.
- e. As a French national, the Claimant was issued with a work permit by the Department of Immigration on May 1<sup>st</sup>, 2021 with a May 1<sup>st</sup>, 2023 expiry date.

13. The contents of the Claimant's employment contract are also not controversial. The relevant provisions are set out below:

Employment

Your employment will commence on or around June 1<sup>st</sup> 2021 and shall continue, subject to the remaining terms of this Agreement, until terminated by either party giving the other not less than three (3) months prior notice in writing. Your position will be Master Baker r1 (Our emphasis added)

#### Job Description

Your job description with respect to the Company and its affiliates includes, but is not limited to, the following:

- Baking a variety of french backed goods on premises daily (breads, viennoiseries, pastries) as well as other savory goods such as quiches/bagels/sandwiches.
- Organize baking schedule efficiently as to minimize waste and maximize output.
- Reach out to potential clients to grow the book of business (hotels, restaurants, supermarkets, catering).
- Manage stocks efficiently and restock regularly.
- Making sure the bakery is kept to the highest of standards in terms of cleanliness both in the sales area and in the production area.
- Come up with new baked goods seasonally.
- Work autonomously with minimal supervision.
- Generate and implement creative marketing ideas to grow the business.

...

#### Salary

Your salary will be \$6,250 per month. Salaries will be paid monthly in arrears and will be reviewed annually. There are no collective agreements that directly affect the terms of your employment. You will be eligible to receive an end of year bonus in the amount of 5% of profits generated by the company during the 1<sup>st</sup> year of employment, 10% during the 2<sup>nd</sup> year of employment and 15% during the 3<sup>rd</sup> year of employment going forward. Pay out from this program is discretionary and depending on the Company's performance your performance and market conditions. Payment of bonus will be issued within 45 days of the end of the fiscal year. (Our emphasis added)

...

#### Place of Work/Hours of Work

The Employee will be working at the retail location of the Company in Bermuda located a HM 11. The Employee's normal working hours shall be 7.00am to 6.00pm Mondays to Saturdays and such additional hours as are necessary for the proper performance of his duties. The Employee acknowledges that he shall not receive further remuneration in respect of such additional hours.

#### Holiday Entitlement

You will be entitled to 20 days of paid vacation per annum plus local public holidays.

...

#### Discipline Procedures

A progressive discipline policy is in place at the Company that allows varying levels of disciplinary action for specific discipline issues. Employees who violate any company rule or policy will be disciplined fairly, consistently, and in proportion to the seriousness of the circumstances as determined by management. This may include disciplinary action up to and including termination from employment for the first offence.

#### Termination

The Agreement and the employment of the Employee hereunder shall terminate upon the occurrence of the first to occur of the following events or conditions:

The Employee will be immediately terminated without notice for serious misconduct which is directly related to the Employee's employment relationship with the Company or which has a detrimental effect on the Company's business and makes it unreasonable for the Company to continue an employment relationship with the Employee. If the Employee is found committing a lesser misconduct than serious misconduct above, but conduct which is directly related to the employment relationship the Employee will receive a written warning regarding such

conduct. If within the next six months the Employee is found to be committing the same or similar misconduct the Employee will be terminated immediately without notice.

### **Mr. Hild's Employment Timeline**

14. At the outset of the December 15<sup>th</sup>, 2023 hearing, the Tribunal advised the parties that we had questions about certain elements of the factual timeline, as referenced in the statements of case and witness evidence, which were unclear. As a result, the initial part of the session was devoted to hearing from Mr. Hild about the chronology of his employment and the circumstances of what he described as his resignation. Mr. Hild contended that he:

- a. informed ..... verbally in about December 2022 of his intention to the leave the Respondent and return to France to pursue a career as an army pilot,
- b. was asked by ..... not to put details of the resignation in writing and he initially agreed not to do so,
- c. had a further discussion with ..... in early January 2023 about his departure and his commitment to training a replacement baker, and
- d. sent ..... a WhatsApp message on January 19<sup>th</sup>, 2023, confirming his decision to resign.

15. The January 19<sup>th</sup>, 2023 WhatsApp exchange between Vincent Hild and ..... i is instructive. A copy of the original exchange (which was written in French) and an English translation of it were provided as part of the Claimant's evidence bundle. The English translation reads in relevant part:

[ ..... forwards the Claimant a copy of a WhatsApp text received from Claimant's brother, ~~Francis~~, who was also employed by the Respondent, which referred to the Claimant's resignation]

(TB): I'm putting this to you because it's not really connected with what we talked about yesterday.

Vincent Hild (VH): How is that not in agreement [with what we talked about]?

TB: You told me yesterday that he [ ..... ] knew very well that you had the [army] pilot project in mind that that it was possible that you would leave [the company and Bermuda].

VH: I understand what you are talking about or where you are coming from. Everything [said in the text with my brother] is in agreement [with what we discussed]. I made my decision [upon] returning from Costa Rica. The [army] pilot project that I have had in mind since I was a kid. The only thing that is not in agreement is why he [ ..... ] came and

why I made him come. He came thinking he was going to help me, to give me a hand basically. I brought him here for the opportunity that it represents, so that he could take up the torch no matter what. I still had in mind your plans to open elsewhere until recently. Today I realize that these are your plans and not mine. And I have to carry on my own route. I am also disappointed that Françoise does not want to take over [from me]. The opportunity remains a good opportunity [for him], unfortunately he has his own dreams and desires too. I can't force him to change. In the meantime, I will remain present for the next 6 months to ensure the succession and Françoise will remain until September and should also ensure that. I have always been upfront and honest with you and

16. The Tribunal understands this WhatsApp exchange to reflect (and document in writing) the Claimant's prior discussion with [redacted] in December 2022 and early January 2023, that he was ending his employment with the Respondent and returning to France. The message also indicates that he would be prepared to work for a period of 6 months (a point we return to below) to allow the Respondent time to find a replacement.
17. [redacted] viewed matters differently. He said that while Vincent had told him that he was thinking about returning to France to join the army, nothing was ever agreed. During the hearing [redacted] said that he had asked Vincent to give him enough time to plan for his departure if indeed he wanted to leave, but that Vincent never communicated his decision to resign.
18. The Tribunal finds that discussions held in December 2022 and January 2023 during which Mr. Hild expressed an intention to end his employment with the Respondent and return to France did not amount to notice of termination of his employment, because his intention was not communicated at that time in writing, as required by the employment agreement.
19. The Tribunal finds that Vincent Hild did, however, give notice to end his employment on January 19<sup>th</sup>, 2023, via WhatsApp message. The Claimant's employment contract only required that the notice of termination be in writing. It did not specify the medium in which the writing was to be set out. There is no requirement for notice of the termination to be set out on paper or in an email. There is no limitation in the employment agreement that would prevent the Claimant from providing written notice of termination in a WhatsApp message. Accordingly, the Tribunal finds that notice of termination was given on January 19<sup>th</sup>, 2023.
20. Our view that the January 19<sup>th</sup>, 2023 WhatsApp message documented in writing the Claimant's resignation is underscored by the contents of a voice note sent by [redacted] to Vincent Hild in which [redacted] discusses his understanding of the reason Vincent Hild had resigned (i.e. to take up a job with the French army as a pilot). A transcript of the voice note was included in the Claimant's evidence bundle.
21. The Tribunal observes that in the voice note [redacted] encouraged the Mr. Hild to reach out to his brother [redacted] to discuss his decision to resign, in essence saying that (given [redacted] role in the company and the relationship between the two) it was preferable (and perhaps more professional) for Vincent to share details of his departure with [redacted] orally, as opposed to doing so in writing.

22. There is nothing in the Claimant's employment contract that would prevent him from providing longer than 3 months' notice, and it is perfectly reasonable that the Claimant would consider offering longer than the minimum notice period to enable the Respondent to hire and obtain a work permit for his replacement.
23. The Claimant was, however, restricted in the duration of time he could spend working following his resignation, as he was only lawfully permitted to work in Bermuda up to May 1<sup>st</sup>, 2023, the expiration date of his work permit. The significance of this point appears to have been overlooked by the parties initially, as there was a tacit understanding that the Claimant would remain employed for a further 6 months from the time of his resignation to facilitate a replacement being brought on board. Had the Claimant tendered his resignation in December 2022 in accordance with the terms of his employment agreement, offering to work for an additional 6 months (instead of the minimum 3) would have taken him up to about May 1<sup>st</sup>, 2023, the date his work permit expired. However, we have found that written notice of termination was not given by the Claimant until January 19<sup>th</sup>, 2023. Without an extension to his work permit, the Claimant was precluded from working beyond May 1<sup>st</sup>, 2023, and we read any agreement that he would remain beyond 3 months from the date of his notice as being subject to his work permit limitations.

#### **Mr. Hild's Bonus**

24. For some time prior to and following his resignation, the Claimant believed that he was entitled to payment of a bonus for 2022 by virtue of the terms of his employment contract. As set out above, the "Salary" clause provided for a discretionary bonus of "5% of profits generated by the company during the 1<sup>st</sup> year of employment". Payment of the bonus was dependent on the company's performance, the Claimant's performance, and market conditions.
25. From the Claimant's evidence, it is clear to the Tribunal that he believed the Respondent to have made a profit and that his hard work in preparing for the opening of the business and in navigating the early days of its operation justified the payment of the bonus. As a consequence, he spoke with [redacted] about the bonus and the timing of payment.
26. While it was accepted that the Claimant was a diligent employee, the position conveyed to the Claimant by [redacted] was that the company's liabilities meant that it was making an operating loss for the year ending 2022, and not a profit, with the effect that the company's performance did not justify the payment of a bonus.
27. Mr. Hild did not believe the company's performance was such that no payment of a bonus for his first year of employment was justifiable. During the hearing [redacted] said that the Claimant had become fixated on the company having become profitable within the first year of operation, which (according to [redacted] i) led to the wrong conclusion that a bonus was payable.
28. As it relates to the question of whether a bonus was payable, the Tribunal is guided by the witness evidence submitted by [redacted], the Respondent's accountant, who observed that while the company had positive cash flow, it had not generated a profit given outstanding liabilities. [redacted] said,

On January 11<sup>th</sup>, 2023, Mr. Hild came to my office and I walked him through the 2022 balance sheet/income statement, I explained to him that in cash terms we were cash flow positive but in accounting terms we were at a loss and therefore we did not generate net profits.

On February 16<sup>th</sup>, 2023, Mr. Hild messaged me asking me how much we "made" last year (2022) to which I replied that we were cash flow positive of \$100,000 but that we hadn't paid any loans back yet. He answered in disbelief saying he thought net profit was \$178,000. I explained to him that we had past due bills for the bakery construction so the cash flow was only \$100,000. He did not ask for the actual net profit nor did I volunteer the net profit amount but it was in the amount of minus \$123,466 for 2022.

29. The Tribunal finds the evidence of Mr. [redacted] be persuasive, and concludes that the Respondent was not profitable, and that a precondition to payment of the discretionary bonus for 2022 had not been satisfied. The Tribunal finds that the relevant details of the Respondent's financial performance were communicated to the Claimant in about February 2023. Nonetheless, Mr. Hild continued under the mistaken belief that the Respondent was profitable and that he was unfairly being denied a bonus for 2022. His annoyance with the nonpayment of his bonus led him to pen an email on March 3<sup>rd</sup>, 2023 that we shall refer to as "*the March 3<sup>rd</sup> email*".

***The March 3<sup>rd</sup> email***

30. It is useful for us to set out the full contents of the email:

From: Vincent Hild  
Sent: Friday, 3 March 2023 2 11 pm  
To: vincent.hild  
Subject: RESIGNATION TERMS

Philippe Thomas,

After both our interview, I am forced to realise that I may never be rewarded for all the hard work I have accomplished for you and your business.

The only answer I have received was " Maybe " and I can't rely on a maybe.

When giving my resignation I committed to make sure the business would still run as normal and that I would be replaced. Even if I had to work after my work permit expiration.

However, I have had ears of complaints and lack of acknowledgement towards the work I have done among the discussions you had with my team and coworkers.

It seems like you are not satisfied and I haven't done enough. That the shifts and hours I have spent making sure this business runs and that all shifts are covered were in vain. On top of that, the fact that you are not respecting the contract that has been signed by both parties and the lies told to the team.



It is pretty bold, disrespectful and selfish taking into account that thanks to me you have a 1.38 Millions dollars running business while being in vacations all year round cashing in for yourself 100 000 dollars not including the 15-20 thousands of expenses.

You can tell by this message that I ran out of patience and am tired of paying the price of your poor decisions and lack of professionalism and leadership.

I am filled with sadness and anger.  
Honor has been broken and trust is lost.

So here are your options:

Option 1:

I stay under contract until the end of my work Permit. (1st of May). But will take the 2 last weeks of April as my last paid vacations that I am entitled to.

With this option I will not train my replacement, I refuse to train him and waste my time and energy. Taking into account that I will be in vacations the whole month of April, I won't work 6 days a week which means that there will be a day per week without bread, advised Wednesday.

If comes the case that I work 6 days a week for the whole month and don't take my vacations before the end of my work permit. I want all the extra days and the vacations to be paid for with a x2 overtime, paid before end of March.

This option doesn't erase the percentage of profit sharing that I am owed.

And according to the law, as my employer, being a work permit holder, you are required to pay for my repatriation. According to the Immigration Work permit policy. Find attached.

Option 2:

I am paid a bonus of 17,500.00 USD accounting for the profit sharing that I never received. I work 6 days a week, don't take my vacations, take care of my departure.

I will also make sure my replacement is trained and I will stay until end of May to do so.

In that case we agree that I will be paid my normal contract rate for the whole month of May as a Fee For supervision and overlooking time while I settle my affairs.

I want the bonus payment made before the end of March and May's fee made before end of April.

Note:

Instructions are pretty clear. Pick an option and answer by e-mail. I don't want to be called or talked to. I have heard it all and I have had enough.

For the best interest of everyone, option 2 is best to me.

I vow to follow the instructions of both options and to perform my duties in good manners.

Hopefully you can do the same.

Regards,

Vincent

HILD

31. It was agreed by all sides that the March 3<sup>rd</sup> email was strongly worded. We understand that Vincent Hild drafted the email out of frustration with a view to provoking resolution of the issue relating to the payment of his bonus for 2022. He believed that he was being taken advantage of and that his commitment to the business was not being rewarded in accordance with his contract. Unfortunately, and as we have said above, his understanding of the true financial affairs of the company, and whether they justified payment of a bonus, was misguided.

32. The email came as a shock to [redacted] and I [redacted]. They explained during the hearing that they considered the options provided as an attempt to extort payment of a bonus in circumstances where it was neither guaranteed nor payable given the company's operating loss.

33. The email prompted a combative exchange by WhatsApp between the Claimant and [redacted], which concluded with the Claimant asking [redacted] whether he had been fired, and with [redacted] responding in the affirmative. An English translation of the text of that exchange is set out below:

[PB]: Vincent – I absolutely do not appreciate your message. I am coming home Friday [next] week. I'll show you what is going on professionally.

VH: I don't like the way you run your business. I don't want to know anything. When I hear and see the things that [redacted] does and says... I don't even have the words. The observation is simple. The shop turned and [made profit]. The arrangements you have between you are not my problem. But today telling me and telling the employees that you don't make a profit when you fill your pockets is saddening. Through the development of the business I made the account with Alhou. I know which expenses are productive and which are not.

PB: Do not write me again. You can leave the island immediately.

VH: I know that on my side I have been legit and honourable. You are not. I don't want to know anything more. I finish and do what I have to do or not. I'll walk away that's all.

PB: Good by Vicent.

VH: So am I fired?

PB: Yup

34. After reading that he had been fired, Mr. Hild took the decision to close the store and send the staff home early. He also gave away baked goods to customers, which based on the evidence presented is not wholly outside the usual course of business given that the bakery does not keep

baked goods for longer than one day, and it does have a program for providing leftovers to charitable groups. Mr. Hild left the bakery with the understanding that he was no longer employed by the Respondent.

### ***The aftermath of the March 3<sup>rd</sup> email***

35. The position of [redacted] and [redacted] on what happened after they each received the March 3<sup>rd</sup> email differs. While [redacted] described the email as being unacceptable in both tone and content, he believed it was possible to *roll what happened back*. For him, the email was disrespectful and out of line. [redacted] believed matters might calm down after a few days. His evidence is as follows:

After Mr. Hild was terminated on the same day that we all received his email, I decided on purpose not to reach out to him to let him cool down as I knew him to be... irrational ... I decided to message him two days later over the weekend to kindly tell him that I lamented the situation we were in and that I wanted us to put his blow up behind us and finish our contractual agreement on a positive note, including extending a bonus should he be eligible for one.

36. The evidence shows that [redacted] did indeed reach out to Vincent several days after the March 3<sup>rd</sup> email was sent in an effort to smooth things over, and to broker an agreement whereby Vincent would continue working for the Respondent.
37. [redacted] said that he was equally annoyed by the content of the March 3<sup>rd</sup> email. He said that he and Vincent had lunch the week before and discussed the bonus and the fact that it was not contractual, but discretionary based on certain conditions, including profitability. The lunch had been cordial, and he said he was shocked to receive the March 3<sup>rd</sup> email. [redacted] said that he believed it would be best if Vincent was terminated. Although he admitted sending the text saying that Vincent was fired, [redacted] said that he had no authority to fire him and that he would have instructed Thomas to do so, and that he did instruct [redacted] to do so.
38. When pressed by the Tribunal about why he had told Vincent that he was fired via WhatsApp message, [redacted] doubled down on the point, saying that he had no authority to terminate Vincent. In essence, he said that Vincent should have ignored the text message. [redacted] then likened himself to an ordinary person walking into the bakery off the street, and telling Vincent that he was fired. He said that Vincent would have ignored a statement that he was being fired by such a person, and that Vincent would not have taken the statement from him about being fired seriously. We do not view that assertion credibly.
39. The Tribunal viewed the March 3<sup>rd</sup> email as both emotive and inflammatory. While we could have been sympathetic to an employer who took the view that the email formed justification for summary dismissal, the evidence presented in this case by [redacted] for the Respondent was that he viewed the email as premised on a misunderstanding regarding the payment of a

bonus and was prepared to work through that misunderstanding once heads had cooled. The efforts of [redacted] after the March 3<sup>rd</sup> email was sent bears this out. Instead of taking the position that it was unreasonable to expect the Respondent to continue Mr. Hild's employment, the efforts of [redacted] showed that the March 3<sup>rd</sup> email was not an impediment to Mr. Hild's continued employment.

40. The Tribunal does not accept [redacted]'s position that he had no authority to fire Vincent, and that his WhatsApp message saying that Vincent was terminated was of no consequence. Based on what we learned of his involvement in the Respondent, we believe he would have had actual authority to terminate Vincent, or at the very least ostensible authority given the conduct of the Respondent vis-à-vis [redacted] (see *Armagas Ltd v Mundogas SA (The Ocean Frost)* [1986] AC 717; *Freeman & Lockyear* [1964] 2 QB 480. If [redacted] i can be treated as having authority to enter into contracts on behalf of the Respondent under the law of ostensible authority, this must surely extend to an ability to terminate contracts, including contracts of employment.
41. During the hearing the Tribunal observed that the internal HR processes of the Respondent were not well developed or documented. The evidence given by [redacted] at the hearing suggested to us that he was not a silent partner lurking in the background. He was known within the business, and while he may not have been engaged in its day-to-day affairs, his views on the operation mattered to the operation of the Respondent. Moreover, we find that employees like Vincent Hild were led to believe that his views on the operation of the Respondent mattered. This is reflected by [redacted]'s exhortation in early 2023 that Vincent share his desire to end his employment with [redacted]. Both Vincent and [redacted] gave evidence of discussions they had with each other about aspects of Vincent's employment, including payment of the bonus. Indeed, [redacted] evidence was that the two discussed the business (and [redacted]'s plans for the business) and Vincent's employment at lunch about one week prior to the March 3<sup>rd</sup> email.
42. Even if [redacted] lacked actual authority to terminate Vincent, we believe the role he played within the Respondent's business was such that the Respondent gave him the appearance of having such authority. It is clear that Vincent believed [redacted] had authority to fire him, and it is also clear that he believed he had been fired by [redacted]. In the circumstances, the Tribunal finds it reasonable for him to conclude that his employment had been terminated.
43. As mentioned, the Respondent did not seek to summarily dismiss the Claimant based on the content of the March 3<sup>rd</sup> email. Also as mentioned, the evidence of [redacted] was that he believed the employment relationship had not been fractured beyond repair. As a result, there is no basis for us to find that the March 3<sup>rd</sup> email justified the Claimant's summary termination, with the effect that Mr. Hild's termination by [redacted] was not justifiable. If action was to be taken in relation to the March 3<sup>rd</sup> email it should have followed a progressive disciplinary process. This was not done.

#### **Relief Granted**

44. The Tribunal finds in favor of the Claimant.
45. This is not a matter where reinstatement is warranted or justified.

46. The Tribunal awards the Claimant:

- a. 3 weeks wages in recognition of his completion of one year's continuous employment in the amount of \$4,327,
- b. Payment in lieu of notification for the period March 3<sup>rd</sup>, 2023 to May 1<sup>st</sup>, 2023, in the amount of \$12,500, and
- c. Payment of all accrued and unused vacation days dating back to June 1<sup>st</sup>, 2021.

The Tribunal decision is binding and can be appealed to Supreme Court within 21 days of receiving this decision.

Date: February 29<sup>th</sup>, 2024

Chen Foley – Tribunal Chairman



McKeisha Smith – Deputy Chairman



Paget Wharton – Tribunal Member



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