

**IN THE MATTER OF A DISPUTE UNDER THE EMPLOYMENT ACT 2000
BEFORE THE EMPLOYMENT AND LABOUR RELATIONS TRIBUNAL**

BETWEEN

WENDELL SIMMONS

Claimant

-and-

Respondent

DECISION

Hearing Dates: 6 July 2026
17 August 2026
27 August 2026

Members of the Tribunal: Ms. Charlene A Scott, FCI Arb Chairman
Mr. Peter Aldrich, Deputy Chair
Mr. Robert Horton, Member

Mr. Wendell Simmons, Complainant, in Person

Witness for the Claimant – Himself
Witnesses for the Respondent –

1. As the parties could not agree on a date to hold the Directions Hearing, the Chair provided the respective Directions to the parties to ensure efficient trial management of the case and asked that they respond by a suggested hearing date. The agreed hearing date was then set for Monday morning, 6th July 2026. The Tribunal and the parties met, the Chairman confirmed the issues to be considered and the matter proceeded.

2. As is the norm at the start of the hearing, the parties were given an opportunity to settle this matter without the need for the Tribunal's intervention and the need proceed to trial. There was no settlement and the hearing resumed later that morning. The evidence came from Witness Statements with attachments if any, live testimony and a video/pictures of the event that occurred at a Hamilton Parish home ("the property").
3. Mr. Wendell Simmons. hereinafter referred to as the Claimant, was at all times an employee of _____ hereinafter referred to as the Respondent, from 4th June 2024 to 29th April 2025. The Respondent was at all times a company that provided innovative _____ and promoted the highest level of integrity and reliability from its employees.

LEGISLATION

4. The principal sections of the Employment Act 2000 (referred to as the Act), in particular, sections 9 and 25, are the priority sections that are important to this case. They read as follows:-

Section 25- Summary dismissal for serious misconduct-

An employer is entitled to dismiss without notice or payment of any severance allowance an employee who is guilty of serious misconduct—

- (a) which is directly related to the employment relationship; or*
- (b) which has a detrimental effect on the employer's business, such that it would be unreasonable to expect the employer to continue the employment relationship.'*

5. Section 9- Overtime

(1) Any hours worked by an employee in excess of forty hours a week shall either—

- (a) be paid at the overtime rate; or*
- (b) be paid at the employee's normal hourly wage and compensated by giving him the same number of hours time off in lieu.*

(2) Subsection (1) shall not apply —

- (a) where the employee is a professional or managerial employee whose statement of employment indicates that his annual salary has been calculated to reflect the fact that his regular duties are likely to require him to work, on occasion, more than forty hours a week; or*
- (b) in any other case where the employer and employee agree in writing (our emphasis) that it shall not apply.*

EVIDENCE

6. The facts of this case are simple. On the afternoon of 14th April 2025, between 5:41 pm and 5:57 pm, the Claimant is alleged to have cut a piece of plywood and removed the same from the property where he was providing _____. In the video, we saw that the piece of

plywood was to the left of the screen; then we see the piece of plywood being propped up against a ladder and then, allegedly, the Claimant sawing the right corner of the plywood with a hand saw. We noted that the piece of plywood had a dark coloured knot in it. A corner of the plywood was cut off and the remaining piece was returned to the original spot from where it had been removed. The corner of the plywood was now missing.

7. When confronted during a meeting with management shortly thereafter, the Claimant denied any such knowledge of cutting the plywood. He also denied having taken or removing the said piece of plywood from the property. He was shown a photograph of a person on the property at the time when he, the Claimant, was supposed to be and the property. The Claimant denied that it was him in the video cutting the plywood. He offered the explanation that the video was too grainy to tell anything about the person.
8. The video provided by the property owner showed someone walking up and down in a particular area, seemingly paying close attention to the contents of what was there. The person is observed touching a piece of plywood and then eventually taking what looked like a saw, making the motion of and cutting a section of the same. There is no direct evidence showing the actual removal of the cut piece of plywood from that area or even from the property. However, there is the email from the director of the business that engaged the services of the Respondent to the property while it was being fumigated. In that email, the director explains that the property owner, upon his return to the property, noticed that a piece of plywood had been removed and was requesting either that it be returned or that he receive compensation for it. The property owner did not wish for police involvement. The director of the business had forwarded to the Respondent a video from the property owner as proof of when the Claimant was providing to the property and to show what the plywood looked like.
9. The Claimant was invited to attend a meeting on 29th April 2025 with the Respondent's Manager and Manager. When asked if he knew anything about the missing plywood, the Claimant replied negatively. The of the Respondent company had joined the meeting while it was in progress. When shown the video, the Claimant said that it was too blurry to state conclusively that it was him shown in the video. The Claimant denied that it was he in the video, even when presented with a clearer image. Significantly, later during the hearing, the Claimant acknowledged that it was him in the picture but he continued denying being the person in the video. The Claimant stressed that the person shown by the plywood was wearing a baseball cap and that he did not wear one.
10. In that same meeting, the Respondent's senior managers felt that there was sufficient evidence before them to conclude that the Claimant should be summarily dismissed for the actions they observed in the video and in the still photo. Reportedly, the Claimant had also engaged in questionable activities at other job sites where the Respondent's services were required, thereby causing concern to the Respondent, although the Tribunal had sight of no written evidence to that effect. Also, during the meeting of 29th April 2025, the Claimant is alleged to have asked the Respondent's if he could keep his job if he compensated the property owner for the missing plywood. The Claimant's offer in this regard

was refused and his termination confirmed. The Claimant later denied that he had offered to compensate the property owner for the loss of plywood.

11. The Claimant asked to have someone from the Bermuda Industrial Union ("the BIU") attend a meeting with him and to speak on his behalf. The Respondent agreed that he could bring a BIU officer to the next arranged meeting to assist him. That meeting was held a few days later, but there was no resolution. The Claimant remained summarily dismissed. There was no turning back; trust between the parties had been broken.
12. During the meeting attended by the Claimant's BIU representative, it was revealed that the Claimant had not informed his BIU representative of his offer to pay for the plywood in exchange for retaining his employment with the Respondent. The Claimant's story then changed entirely where he denied that he had anything to do with disappearance of the plywood.

SECTION 25 SUMMARY DISMISSAL

13. Section 25(a) of the Act provides that the employer is entitled to dismiss without notice or payment an employee who is guilty of serious misconduct which is directly related to the employment relationship. The Respondent is in the business of providing to businesses or to such other businesses requiring to respective clients' premises where they themselves must provide a service, in this instance, the fumigation of a property. The Respondent's client required for several hours including while a property was being fumigated and while the property owners were away from the premises. So, this was a two-tiered level of engagement, a sub-contract, if you will, for the client, who in turn sought from the Respondent.
14. The Claimant violated the very policy and rules under which the Respondent operated. In this regard, page 38 of the Respondent's Employee Handbook states as follows:

'You are expected to do everything possible to prevent damage to the Company's property and the property of our client. However, should damage occur, the incident must be reported immediately in writing to your immediate Supervisor with the details of how and when the damage occurred. Unreported damage, or damage caused by negligence may be cause for disciplinary action. Employees will be responsible for the full cost of any lost or damaged Company or client equipment or property if after a full investigation has taken place it has been determined that the Employee is at fault. Payments will be deducted from the Employee's salary until the cost is paid in full. The amount is to be agreed between Management and the Employee.'
15. What occurred struck at the heart of the business such that trust between the company and its client as well as loyalty to the client were destroyed. Such destruction of trust is hard to restore. There will be no return to the company once that bridge is broken. Reputation is at stake and reputation in a business is everything.

16. Page 39 of the Respondent's Employee Handbook states as follows:

'As a _____, your conduct is expected to be of an honorable and upright nature while on duty. We expect each _____ to act in a mature and responsible manner at all times. Your role as a _____ is a very important one, and many people are depending on you to give your best while working.'

The Claimant failed to act in a responsible or mature manner when he handled this property. He did the opposite and then pretended that he was not the person shown in the video.

17. The limbs of section 25 are clearly met: 1. The misconduct (cutting, damaging client's property, removing the same) was so serious that it impinged on the level of trust between the Claimant and the Respondent and 2. it destroyed the nature of company's business and reputation such that the Claimant could no longer have a relationship with the company. Destroying a client's property and removing the same damages the very heart of being employed in a _____ company. Destroying a company's reputation clearly fits in the definition of section 25 (b) of the Act where the Respondent cannot be expected to continue employing the Claimant after such serious misconduct was exposed.
18. In the Court of Appeal for Bermuda case of Raynor's Service Station v Bradshaw [2017] Bda LR 72 at page 2 sets out clearly the grounds for summary dismissal. It states that *'in order for an employer to dismiss an employee without notice two conditions must be satisfied. First the employee must be guilty of serious misconduct and second it must be such that it would be unreasonable to expect the employer to continue to employ him.'*
19. In viewing video evidence from the recent property secured by the Claimant, it was noted in the video at approximately 5:41:05-25 pm on 14 April 2025, that the person observed in the video had the similar build and complexion to that of the Claimant and that the person wore a distinctive watch with gold or brass on the dial on his left wrist that was very similar to the watch worn by the Claimant throughout the Tribunal hearing. The video also showed that the person wore clothing that was exactly like the Respondent's uniform; this person was seen to be cutting off a piece of plywood garnered from somewhere on the property that was supposed to be secured by the Claimant. One of the Claimant's major responsibilities as a _____ was to _____ property, not damage it. This cutting off the piece of plywood clearly goes against the mandate of the company.
20. When the time sequence was reviewed from the video and the still photo, the Tribunal observed that the remaining piece of plywood was returned to its original position along a wall minus the upper right hand corner. In the still picture provided, we noted at 2:14:50 pm on 14 April 2025, that the Claimant, with no cap on his head, stood looking at the plywood or whatever else was along the wall. In the hearing, the Claimant acknowledged that it was himself. The piece of plywood in front of him had a dark coloured knot in it. From the Claimant, we were provided a photo taken of a cell phone showing 4:35 pm on the same date, with a text saying 'Off- site bathroom'. There was no return time to indicate 'Onsite'. However, we next observe in the video at 5:41:05-25 what looks to be the Claimant, wearing a cap, sawing

at the upper right corner of the plywood. This piece of plywood has the same dark coloured knot in it as well. Finally in the video at 5:57 pm, the remaining piece of the plywood with the dark coloured knot in it was observed to have been placed back along the wall with the upper right hand corner removed.

21. The owner of the property returns, views his home video and then reports the matter to the Respondent's client. Aspects of an email from their client to the Respondent after hearing from the property owner with respect to the plywood incident, follows:

' ... Reaching out as I've just had our client come in and show us footage of the from the job on April 15th /16th at (address). The client is understandably quite upset at having looked at the footage of his property to find the taking a saw and cutting a section of their plywood and taking it.

'He does not want to get the police involved at this stage, however, he would like to have the stolen wood returned or the plywood sheet replaced. Can you please provide me with the contact number and name of the individual from the picture attached? ...'

22. The matter is serious enough in the property owner's eyes to potentially warrant police intervention. Before reaching that stage, the property owner was reaching out and looking to resolve the matter by either having the stolen plywood returned or just by replacing the same. The property owner is at a stage of *'let's work it out before I have to call in the police'* because he really did not want any police involvement. He did want the Claimant's name and number, having seen the video and a still shot from the video. Again, this is serious misconduct. It has now gone beyond the stage of just remaining in the office. It is now outside in the public domain striking at the very heart of the service. The number of outside persons having a vested interest in resolving this matter as soon as is practicable no longer rests solely with the Respondent's management team; it now involves their client who may now begin to have second thoughts about the continuation of the Respondent providing future services for them. The Respondent's business reputation is now at stake.
23. The Claimant maintained that he had to go home to use the bathroom and then to get himself a meal. He showed the Tribunal a text where he apprised a supervisor of the fact that he was going off site. Technically, he was to wait for someone to come and attend and relieve him. That did not happen as he left before anyone came to relieve him. He claimed he was off-site for perhaps just over an hour. What he fails to appreciate is that he has breached his employment contract by abandoning the property before someone attended to relieve him. There was a huge gap of time in which the property was exposed to a potential or from another.
24. When the Respondent's attorney put to the Claimant that there were two establishments near the property where he could have used bathroom facilities, all the Claimant could say is that he went home, which is at least a half an hour being away from the property, and he had to get something to eat.
25. When the gave evidence, the Claimant asked if the property and its immediate surrounding area had been investigated. The answer was no. In any event, it would not have made a difference going to the scene as the missing piece of plywood was not there and the video shows the type of plywood being cut as well as the remaining cut-off piece. There

were other pieces there to compare. However, the piece taken/removed was no longer at the property.

SECTION 10 - REST DAYS

26. This is a non-issue which the Claimant brought before the Panel at the hearing. Based on the evidence from the , the Claimant was only too happy to work those extra hours. In fact, the stated several times in evidence that it was he, the Claimant, who sought the extra hours; it was he who requested those extra days of work. Rest days were provided. The informed the Tribunal that he would remind the Claimant that those extra hours given would be paid at straight time, information to which the Claimant raised no objection and willingly accepted. One only has to review the weekly pay sheets and observe the number of hours worked by the Claimant to conclude at this point, that he, the Claimant willingly asked for and agreed to work them, rest days or not. The agreement to work those extra hours rests squarely on the Claimant's shoulders because he contributed to and chose to work on a rest day.

SECTION 10A - MEAL BREAKS

27. The evidence of the and the was that the Claimant was free to take meal breaks at whatever time during his working hours that he found convenient, provided that the property to which he was was at all times. The Tribunal was informed that the Claimant was paid for his working hours and that at no time were deductions from his salary made for taking a meal break.

SECTION 9 - OVERTIME

28. Section 9 (1) *Any hours worked by an employee in excess of forty hours a week shall either—*
- (a) be paid at the overtime rate; or*
 - (b) be paid at the employee's normal hourly wage and compensated by giving him the same number of hours time off in lieu*
- (2) *Subsection (1) shall not apply ---*
- (a) where the employee is a professional or managerial employee whose statement of employment indicates that his annual salary has been calculated to reflect the fact that his regular duties are likely to require him to work, on occasion, more than forty hours a week; or*
 - (b) in any other case where the employer and employee agree in writing that it shall not apply.*
29. The Act states that persons working over 40 hours a week shall be compensated at the overtime rate or be given time off in lieu. The Respondent's Employee Handbook virtually

mirrored the wording in the Act. However, it does not speak to employees requesting more time and what the payment rate will be. If anything else is agreed, be it more hours or more days in the week, and if compensation is at a rate other than what the Act stipulates, it has to be agreed between both parties in writing. (Section 9(2)(b) of the Act). The Act does not state 'may be paid' at the overtime rate, etc. It states 'shall' and as such, the Act has to be followed. There was no alternative pay option given in circumstances such as what we find here. Verbal agreement is insufficient to cover any agreement for a straight time rate when working additional hours past 40 hours; agreement must be in writing, even if it's a text.

30. The Claimant was dismissed by the Respondent in April 2025. In January 2026, some nine months later, at which time the Claimant decided to bring a claim against the Respondent, there was no mention of a claim for overtime until he submitted his Statement of Claim for the Tribunal hearing in May 2026. The Tribunal, having reviewed the signed Statement of Employment to ascertain the wording used for overtime, found no documentation to support the evidence of agreement to work at straight time, such as a memorandum, addenda or texts showing such agreement. There was no supportive wording found in any of the signed documents before the Tribunal.
31. Given that overtime is now being claimed, the Tribunal viewed the supporting weekly pay slips and found that approximately \$16,921.00, pre-government tax deductions, is owed to the Claimant. There were various rates assigned him at the different locations and, of course, if the Claimant was assigned to any of the covered by with the such as and he would receive a larger rate still. All of the various rates were taken into consideration. The Tribunal could not provide an average overtime rate as was suggested by the Claimant and thus considered the number of weeks worked and the In those circumstances, the Tribunal concluded that over \$16,000 was owing to the Claimant minus all applicable government taxes.
32. The Claimant did his best to have the Tribunal treat all his wages as if he was a unionised employee. However, he failed to appreciate that despite enjoying BIU membership, he had been employed by the Respondent in a non-unionised position. Consequently, he was entitled to BIU wage benefits only when to one of the mentioned above with which the Respondent had signed off No union dues were ever paid out by the Respondent in respect of the Claimant to any union at any time whilst the Claimant was employed by them.
33. The Claimant sought outstanding annual leave pay after it already had been paid to him. As the explained during the hearing, payments such as that are outsourced to another agency. It was overlooked and the agency had to be reminded to pay it out to him. Unfortunately, there is no sanction in the Act if payment is late, only that such payments should be made within a particular time after the person ceases to be employed with them. The Claimant did receive his outstanding monies, albeit later in the year.

34. Whilst in the hearing, the Claimant brought before the Tribunal two applications for Tribunal Members' recusal. Both applications were refused. The Claimant failed to appreciate that the Tribunal is both a trier of fact and an interpreter of the law. As such, the Tribunal is free to comment on matters as they come before it. The Tribunal must consider what is being presented. It must hear and see both sides of the matter. The Chair must move the case along very much like a conductor standing before an orchestra or a musical director leading a band. Otherwise, matters may become disjointed or out of proportion. Flow is the operative word and that had to happen in the hearing.
35. Credibility rates high in cases such as this. Both the [redacted] and the [redacted] gave very credible evidence despite the Claimant attempting to get them to change their version or understanding of events. As the saying goes, one cannot get blood from a stone. If the answer was no or that something did not happen, the answer remains the same no matter how many times the question is asked or a slightly different version of the question is asked. We cannot say the same for the Claimant. The person in the video (the Claimant did not agree was himself) as well as person in the still photo which the Claimant agreed was himself, were one and the same and we the Tribunal found it to be as such.

DETERMINATION AND ORDER

36. Based on the evidence presented:-

[i] The Tribunal finds as a matter of fact and on the balance of probability that the Claimant was dishonest by denying that he was involved in damaging and/or destroying the property of a client where he was providing [redacted] on behalf of the Respondent. The Tribunal finds as a matter of fact that the Claimant is the person in the video and did cut/damage the plywood and remove the same from the property he was potentially securing;

[ii] The Tribunal dismisses the claim of unfair dismissal as well as the claim to be reinstated. The Tribunal upholds the Claimant's summary dismissal effected by the Respondent. There will be no re-instatement with the company. Aside from the overtime referenced at 36 [vi] below, there are no additional monies owed to the Claimant after the summary dismissal. The Respondent will not be found responsible nor liable for any loss of wages after 28th April 2025 as upon that date the Claimant ceased to be employed by the Respondent;

[iii] There will be no monetary awards for meals taken when employed;

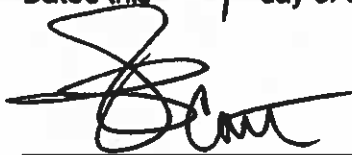
[iv] There will be no compensation or monetary awards for untaken or worked rest days;

[v] As per the Statement of Employment that the Claimant signed on 26th June 2024, the position of a [redacted] was not a unionized position and as such there was no Collective Bargaining Agreement covering his work for the Respondent. No dues were paid for the services of the BIU. No Collective Bargaining Agreement was signed in favour of the Claimant; and

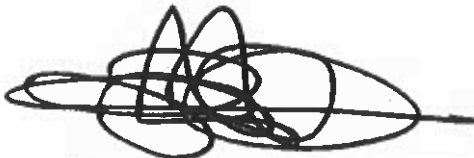
[vi] As it relates to overtime payments, the Tribunal finds that once all government applicable taxes have been extracted, the Tribunal finds that the Claimant should receive the remainder funds from \$16,921.00. Said balance payment after tax deductions are to be paid on or by Thursday, 5th November 2026. The Claimant is to update his banking details via an email to the Respondent and then await the deposit of the said funds into his account. The Claimant shall require no additional contact with the Respondent.

37. The parties to this Hearing are reminded that the Determination and Order of this Tribunal are binding.
38. Any party aggrieved may appeal to The Supreme Court of Bermuda on a point of law only, pursuant to Section 44 O of the Act.
39. The Tribunal makes no further determination in this matter and as such is *functus officio*.

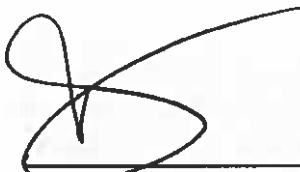
Dated this 29th day of September 2026



Charlene A Scott FCI Arb Chairman



Peter Aldrich Deputy Chairman



Robert Horton Member