



VIRGIN ISLANDS

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

IN THE LABOUR ARBITRATION TRIBUNAL

Case No. BVILAT2024/027

BETWEEN

ROSLYN GILBERT

COMPLAINANT

AND

DHL BVI LIMITED

RESPONDENT

REASONS FOR DECISION

BEFORE: **Samuel Jack Husbands**, Chairperson
Dancia Penn OBE KC, Arbitrator
John Carrington KC, Arbitrator

TRIAL ON:
SUBMISSIONS ON: 6 and 14 February, 15 May, 26 August, 8 and 21 September 2025

APPLICATION
FILED: 8 October 2025

DECISION ON: 27 August 2026

IN ATTENDANCE: (1) Roslyn Gilbert, the Complainant
(2) David Penn, legal practitioner for the Complainant
(3) Anisha Walters, Station Manager of the Respondent
(4) Michael Koeiman of Dentons Delany, legal practitioners for the Respondent
(5) Nina Roheman of Dentons Delany, legal practitioners for the Respondent

ADDITIONALLY: (6) Malisa Ragnauth-Mangal, as Secretary to the Tribunal

1. The Complainant worked for the Respondent for 12 years, commencing 8 April 2011, until her termination on 15 December 2023. The reason given by the employer for the termination was poor performance [**page 17 of the trial bundle**]. The Complainant was employed under a contract dated 8 April 2011 initially as a Sales Executive [**page 20**]. Her job title was changed to Field Sales Executive in 2021. The contract did not contain a list or description of her duties. A job description of Field Sales Executive was accepted by her on 26 October 2021 [**pages 109-111**]. The broad aims of the Field Sales Executive were to promote, sell and produce sales among clients or potential customers in a manner which projects the desired company image and results in the attainment of established goals.
2. It is not clear what was the Complainant's job description before October 2021 and how she was prepared for the functions then assigned to her. It is noted, however, that the functions and targets were set while the BVI was still under or was just emerging from the effects of the Covid-19 restrictions.
3. The Respondent had concerns for some years about the Complainant's job performance. These concerns were first expressed in 2016 – when it placed her on a performance improvement plan (**a PIP**) – and again in 2022. After monitoring and evaluating her performance, the Respondent implemented a performance improvement plan in April 2023 (**the Second PIP**) [**pages 10-13**]. It sent her a letter dated 3 April 2023 [**pages 14-16**] outlining what it saw as areas of underperformance which accompanied the second PIP.
4. The second PIP contained a warning that failure to meet expectations would result in further disciplinary action up to and including termination. The full text of the warning was as follows:

“Effective April 12th 2023 you are placed on a 90-day PIP. During this time you will be expected to make regular progress on the plan outlined above. Failure to meet or exceed these requirements, or any display of gross misconduct will result in further disciplinary action, up to and including termination. In addition, if there is no significant improvement to indicate that the expectations and goals will be met within the timeline indicated in this PIP, your employment will be terminated prior to (90) days. Furthermore, failure to maintain performance expectations after completion of the PIP may result in additional disciplinary action up to and including termination.”
5. Performance issues included failure to meet targets and a decline in revenue. The April 2023 letter exhibited the so-called “sales cockpit” and the “pipeline management data” pertaining to the Complainant [**page 15**]. Ms Walters explained the jargon at paragraph 25 of her First Witness Statement [**page 102**]. The sales cockpit is used to track ‘target revenue’ per month (**TDI**), revenue per day (**RPD**) and shipments per day (**SPD**). Ms Walters also outlined what she saw as deficiencies of the Complainant work shown up by these analytical tools.
6. The three areas of concern identified in the Second PIP were:
 - a) the Complainant's ability to secure and develop new business;

- b) her ability to manage and develop the sales territory to meet revenue and performance targets; and
 - c) her ability to manage the sales pipeline.
7. The targets set out at page 1 of the Second PIP [**page 10**] were as follows:
 - a) Under acquisition, the number of FTB targets was not achieved and no business revenue was generated and there was a decline in active customers
 - b) Under gain and retention, her RPD was declining by 13%, SPD by 11%, WPS by 32% and lost customers increased to 19.9 (at February 2023)
 - c) Under pipeline management, the average number of opportunities was low at an average of 22 over the 3 months to February 2023, and her closing ratio was on the decline at only 27% in February 2023
 8. The Respondent considered the Complainant to be deficient in all respects. The second PIP was set to run for 90 days. Ms Walters met with the Complainant on 3 April 2023 to discuss it. The Complainant replied to the April 2023 letter on 25 April to state that she was the highest revenue earner for the Caribbean and that, in effect, disciplinary action was not warranted. Ms Walters responded that despite the Complainant having exceeded her RPD target in March 2023, she experienced negative growth between February 2022 and February 2023, with no new customer acquisitions.
 9. The Complainant did not appear to take too kindly to April 2023 letter and the second PIP. In a response dated 25 April 2023 [**page 8**] she stated she was unaware disciplinary action was warranted. She stated further she would not respond (substantively) and would seek legal advice. We pause here to state that her reference in the response to section 102 of the Code appears to be a misunderstanding of the reasons for termination which were performance-related and not for misconduct.
 10. For the duration of the PIP, weekly meetings were held between the Complainant and Ms Walters. Ms Walters made notes [**pages 122–135**]. The meetings were not productive.
 11. There was no comparator comprising the targets before the second PIP in April 2023 and the completion of the PIP in July 2023 against which to assess the Complainant's performance or to assess whether there was a general slump in the Respondent's business which needed to be addressed at the management level rather than the sales executive level or if other field sales executives with similar targets were experiencing similar performance issues. Indeed, it was one of the points made by the Complainant that too much of management's responsibility for the success of the organisation was placed on her.
 12. On the other hand, the PIP was quite detailed. It provided an analysis of the problems, observations, expected progress, discussions, and improvement goals including advice on how to accomplish the goals and what resources were available. It further provided for weekly meetings (with Ms Walters), joint visits and coaching sessions.
 13. The history of the lead-up to the Complainant's termination was as follows:

- a) In 2016 the Complainant was placed on the first PIP.
- b) In 2022 she was given a rating of “partially meets” expectations in her performance assessment.
- c) From 18 November 2022 to 31 March 2023, she was on a “boost programme” for the purpose of improving her performance.
- d) From 17 April to 16 July 2023, she was placed on the second PIP. The Complainant was given targets which were contained at page 1 of the PIP [page 10]:
- e) In July 2023, after the completion of the second PIP, the Respondent must have formed the view that the Complainant had underperformed to a degree entitling it to terminate her contract. It entered into negotiations with her for a separation agreement. The negotiations were not successful.
- f) On 22 September 2023 the Complainant was summoned to a meeting with the Country Manager and with Elsa Alexis, the Human Resources Business Partner for St Maarten and the BVI. Ms Alexis stated that at July 2023 the Respondent was of the view that the Complainant’s performance had not improved and the decision was taken then terminate her services. At the meeting the Complainant was offered a severance package. She refused to resign and accept the package. After the meeting there was follow-up by emails from the Complainant on 25 and 26 September.
- g) On 17 November 2023 the Respondent wrote the Complainant [page 178] requiring her to attend a meeting on 23 November for the purpose of considering the allegation of sub-standard performance and for a decision on what action should be taken. The allegations were set out in the letter. They were (i) failure to meet specified targets, (ii) failure to manage and develop the sales territory to meet specified required revenue and performance targets, and (iii) failure to effectively manage the sales pipeline. The Complainant was given the opportunity to call witnesses and produce documents she wished to be considered at the hearing, and to bring a colleague or representative to assist her. The Complainant chose not to be represented or call witnesses.
- h) On 23 and 29 November 2023 two hearings were held with the Complainant to give her an opportunity to defend the allegations of unsatisfactory performance. Ms Alexis exhibited transcripts of the hearings [pages 180 and 207]. At the hearing on 23 November the Complainant could not open critical documents. The meeting was rescheduled to 29 November. The hearing proceeded on that date. There was not much back and forth between the Complainant and the Respondent’s representatives. It is difficult to read the transcripts.
- i) The Complainant was informed by Ms Alexis at the start of the meeting on 29 November 2023 that its purpose was to hear the Complainant’s side of the story based on the letter of 17 November 2023 [top of page 208]. It is not clear if at the bottom of page 4 of the transcript of 29 November 2023 [page 210] if the Complainant’s statement of failure to meet the target per month was a repetition of the charge against her or an admission of her failure. Her defence focused not on whether she did meet targets but on whether the Respondent ran its business in a manner that would enable her to do so. She stated she

was not aware that disciplinary action was being taken against her [**paragraph 33 page 243**] or that she had received promised assistance [**paragraph 38 page 244.**]. She did not agree she needed a PIP. She considered that the second PIP was not designed to help her but to make it easier to take disciplinary action against her [**paragraph 30 page 244**]. We repeat here it was stated in the second PIP that failure to meet expectations would result in further disciplinary action against the Complainant up to and including termination and that she would be liable to termination if there was no significant improvement.

- j) After the hearings, the Respondent conducted a review of the Complainant's performance-related documents and the transcripts of the hearing and decided to dismiss her. The Complainant testified at paragraph 21 and 22 of her amended witness statement [**page 242**] that she was invited to a meeting on 15 December 2023. At this meeting she was informed her services were no longer needed and she was dismissed with immediate effect with one month's pay in lieu of notice pursuant to section 90(1) of the Code. The amount of the payment was \$4,357.46 [**paragraph page 233**]. She asked for that decision in writing. She was given the termination letter dated 15 December 2023 [**pages 17-18**]. The grounds of termination were "poor performance" based on her failure to meet required acquisition targets, to manage and develop her sales territory, to meet required revenue, and to manage the sales pipeline. The specific failures mirrored the deficiencies identified by the Respondent in the Second PIP and in the letter dated 17 November 2023.

The parties' cases

14. The Complainant was self-represented on 27 September 2024 when she filed her Reply. She did not respond to the allegations of poor performance. However, she set out her case more fully in her witness statement [**page 238**].
15. She testified she achieved great sales and an outstanding performance in the first quarter of 2023, when she was recognised for earning the highest revenues in the Caribbean [**page 239 para 5**]. Ms Walters at paragraph 8 of her second witness statement [**page 273**] stated the Complainant surpassed her RPD Target for the BVI only. She stated further that the award was not in recognition for sales but for the Complainant's effort immediately following Hurricane Irma in 2017 and was only for the month of March 2023 [**paragraph 8iv at page 274**].
16. The Complainant also claimed she had other duties besides sales because the office was severely understaffed. She set out these duties at paragraph 8 of her supplemental witness statement [**pages 239-240**]. She said the office also suffered from a lack of vehicles to pick up and deliver packages and the lack of a forklift to pick up packages in excess of 250 lbs. In addition, she alleged, staff shortages and lack of equipment were chronic. She estimated that the office needed five couriers and five vehicles but was served by only three couriers and two vehicles. It also suffered from the lack of proper working scales.
17. At paragraphs 52 to 82 of her amended witness statement [**pages 245-251**] she outlined examples of the manner in which business had changed and the Respondent's failure to respond to the changes. She was of the view that these factors, and not her performance, may have caused a fall in revenue. They were:

- a) Since the COVID-19 pandemic (from 2020–2022) the manner of doing business had changed permanently. Clients no longer required original documents. Documents are now accepted by email as electronic copies.
 - b) There was increased competition from other courier companies besides FedEx.
 - c) The Respondent raises its rates annually and failed to offer discounts, thereby pricing itself out of the market.
 - d) It failed to market its services.
 - e) It set an unreasonable target of four new accounts monthly. The market in the BVI is too small to sustain such growth.
 - f) It delivered poor quality service that failed to meet client needs such as failure to pick up and deliver packages on time.
 - g) There was a lack of an adequate complement of aircraft to service the BVI and Anguilla from the hub in Puerto Rico. Some packages were left back in Puerto Rico due to lack of space on aircraft.
 - h) There had been high staff turnover.
 - i) The Respondent needed to revisit the operation of the BVI offices with a view to improving efficiency, attaining adequate staff levels and tools.
 - j) She was unfairly blamed for deficiencies within the company itself.
 - k) She was not offered a customer service or courier position in lieu of termination.
18. The Complainant's criticism of the PIP is that it was essentially a one-way instrument. Employees never get to give their own report card of the employer so as to demonstrate that what is considered employee-underperformance is in reality employer-underperformance or poor management and that her termination was in effect downsizing or redundancy under the guise of fair termination.
19. Ms Walters responded to the Complainant's allegations about the Respondent's business shortcomings as follows:
- a) The Claimant surpassed her RPD target in March 2023 for the BVI not the entire Caribbean.
 - b) RPD targets are based on population of a territory, number of sales in previous years, economies, inflation and regulations with population being paramount [**paragraph 8iii, page 274**].
 - c) The outstanding achievement award was given to everyone in recognition of their efforts during the challenging period after Hurricane Irma in 2017 and was not performance-based.

- d) Regarding understaffing, the number of employees ranged between 7 and 10. She considered this number adequate. She pointed at paragraph 14 of her second witness statement to “other duties” referred to at paragraph 8 of the Complainant’s supplemental witness statement [**page 238**]. She stated these other duties were within the Complainant’s remit and were included in her job description. They included the maintenance of customer satisfaction, liaising with staff to achieve greater customer satisfaction in respect of pick-up and delivery times and other special requirements, and the performance of miscellaneous duties.
 - e) Regarding delivery vehicles and other heavy machinery, the Respondent had sufficient vehicles and machinery for their scale of operation. Heavy shipments in excess of 250 lbs were received only about once per month. It would not be financially prudent to purchase a forklift for such light workload. They hired the airport’s forklift and also external trucks and movers when necessary to move heavy packages or shipments.
 - f) Regarding scales, there were working scales.
 - g) Regarding performance-improvement support, Ms Walters stated she met with the Complainant to discuss the contents of the second PIP and thereafter met weekly with her to discuss progress in the areas of concern noted in the PIP.
 - h) She denied the account-opening matter referred to at paragraph 22 below.
 - i) Regarding the lack of access to a working telephone, Ms Walters explained the while office repairs were being carried out and as the Complainant was on the road she was removed from an office to a cubicle where the phone line in the cubicle could be connected via her laptop. After she appeared to be unable to operate the constant plugging in of the telephone cord, she was switched to a cubicle where this was not required.
 - j) Ms Walters denied that the office was closed while she was out.
 - k) Regarding customer satisfaction, Ms Walters denied the Respondent had priced itself out of the market. While it increased rates to meet inflation, cost of goods and cost of doing business, it offered competitive rates and discounts.
 - l) Regarding marketing, she stated the office marketed its services via its online website, news sites and social media and through posters on its vans.
 - m) Regarding staff turnover, she stated that the staff resignations referred to by the Complainant were not as a result of job dissatisfaction.
20. Ms Walters exhibited a letter to the Complainant dated 3 March 2016 following the first PIP and a disciplinary notice dated 12 November 2014. The Tribunal notes that while this establishes that steps to performance improvement were ongoing over a long period they were not being relied on in assessing the Complainant’s performance in the period 2022 to 2023 [**pages 293–297**].

21. Ms Alexis testified that the formal process toward termination commenced with the invitation to the Complainant to attend a performance hearing on 23 November 2023. The invitation was accompanied by a letter and by documents relied on by the Respondent to show poor performance. The letter also informed the Complainant of her right to call witnesses, produce documents for consideration and to have a colleague or representative at the meeting and to access her employment record. The hearing was held virtually. As stated above, at the hearing on 29 November the Complainant raised issues similar to those raised in her evidence at the trial, such as the poor business model of the Respondent and improvements in technology that made clients less dependent of the Respondent's services. We do not find the Complainant admitted to unsatisfactory performance even though she did not assert she achieved or exceeded her targets.
22. The matter was clouded by reference to correspondence between the Caribbean Senior Manager for Sales, Development and Training and a customer in the BVI, regarding the opening of an account. The Complainant claimed this account and possibly more should have been credited to her **[paras 41-47 of her amended witness statement at pages 244-245]**. This was denied by the Respondent. The Tribunal does not consider it is established that this incident, if it did occur, undermined the Complainant's performance. We accept the evidence of Ms Walters at paras 21-26 of her supplemental witness statement **[pages 277-278]**.

Relevant statutory provisions

23. Section 81 the Labour Code 2020 (**the Code**) provides as follows:
- (1) The employment contract of an employee shall not be terminated by an employer without a valid and fair reason for such termination connected with the capacity or conduct of the employee, or with the operational requirements of the undertaking, establishment or service, pursuant to section 88, 89, 101 or 103, and unless the notice requirements in section 90 are complied with.
 - (2) Subject to section 89, an employer may not terminate the appointment of an employee unless the employer has informed the employee in writing of the nature and particulars of the complaint against the employee and has given the employee or his or her representative a fair opportunity to defend himself or herself including access to his or her employment record.
24. Section 103 provides as follows:
- (1) Where an employee is guilty of an offence in breach of his or her employment contract, or of any misconduct such that the employer cannot reasonably be expected to continue to employ him or her if it is repeated, the employer may, when taking disciplinary action in accordance with section 102, warn the employee that repetition of the behaviour will result in summary dismissal.
 - (2) If the employee, after being warned pursuant to subsection (1), is guilty of a similar offence or misconduct in the following six months, the employer may terminate the employee's employment without further notice.
 - (3) An employer who dismisses an employee under subsection (2) shall provide the employee with a written statement of the reasons for the action and the principles set out in section 101(3) and (4) shall apply to the provision of, or failure to provide, such statements,

- (4) The employer shall be deemed to have waived his or her right to terminate the employment of an employee for misconduct if he or she has failed to do so within a reasonable period of time after having knowledge of the misconduct.
- (5) Where, after the probationary period has expired, the employee is not performing his or her duties in a satisfactory manner, the employer may give him or her a written warning to that effect.
- (6) If the employee, after he or she is warned pursuant to subsection (5) and in compliance with subsection (7), does not, during the following three-month period, demonstrate that he or she is able to perform and has performed duties in a satisfactory manner, the employer may terminate the employment contract.
- (7) An employer shall not terminate the employment of an employee for unsatisfactory performance unless the employer has given the employee written warning pursuant to subsection (5) and appropriate instructions to correct the unsatisfactory performance and the employee continues to perform his or her duties unsatisfactorily for a period of three months.

Did the Respondent comply with the Code?

- 25. Subsection (5) of section 103 requires an employer to give its employee a written warning if it forms the view that the employee is not performing her duties in a satisfactory manner and termination is contemplated. As a result of the performance review for the year 2022 which was conducted in the first quarter of 2023, Ms Walters commented on the Complainant's performance in the assessment report [pages 112-116]. See paragraph 14 of her first witness statement [page 99]. The comments were general summaries of what the Complainant could do to improve performance.
- 26. The assessment was followed by the April 2023 letter [page 14]. Ms Walters informed the Complainant that there was a significant gap between target achievement and overall performance [page 16]. In order to assist her, the Complainant was placed on a PIP with coaching, mentoring and training under Ms Walters' supervision. The Respondent's concerns and areas for improvement were set out at page 1 of the second PIP [page 10].
- 27. Prior to the second PIP, the Respondent had initiated a programme called "Caribbean Boost", the aims of which were to offer support and provide additional training and development for sales representatives who were underperforming or in need of further training. The Complainant took part in this programme from 18 November 2022 to 31 March 2023. The Complainant did not do well in the programme. She ranked 39 out of 42 sales executives in the Caribbean region in 2022 and 40 out of 42 for the first quarter of 2023.
- 28. Ms Walters stated at paragraph 41 of her first witness statement [page 104] that she held weekly progress meetings with the Complainant at which she took detailed notes. She exhibited her notes (called progress checkpoints) [pages 128-136]. She reported that the Complainant did not grasp the necessary tasks, spent too much time on administrative tasks when her focus should have been on customer visits. She assessed the Complainant was in the office 90% of the time and only spent 10% on the road or "in the field" as she put it. It was clear to Ms Walters that the Complainant struggled with basic computer skills and took too long to record sales. At the end of the second PIP, Ms Walters offered to extend it by 60 days. It was not extended.

29. The employer seeking to terminate the services of an employee must give a written warning and appropriate instructions to correct or better her performance. If the employee does not demonstrate within the next three months that she is able to perform satisfactorily, only then may the employer terminate her.
30. The warning is set out at **paragraph 4 above**.
31. We accept the evidence of Ms Walters and Ms Alexis that there was no improvement. The Complainant did not seriously challenge her lack of improvement. Her case was, in part, that her figures matched the downward decline of the Respondent's performance. We have no evidence of a general decline in the Respondent's business. What we have are lengthy efforts by the management to work with the Respondent and correct her figures. The question is whether the efforts of the Respondent met the objective criteria in section 103 of the Code.
32. The Tribunal must remind itself not to substitute its own views for those of the employer. We must consider whether there was sufficient material on which a reasonable employer with knowledge of the facts could have terminated the Respondent. The Respondent followed the termination procedure contained in sections 81, 89(1) and 103 of the Code. It gave a warning of unsatisfactory performance and cautioned the Complainant that termination could result if the performance did not improve in 90 days. The warning stated "before" 90 days. That must have been a slip of the pen. Nothing turns on it. The Complainant had well over 90 days. The termination hearings did not take place until late November and the actual termination notice was given in mid-December. During the 90-day period the Complainant gave the Respondent assistance in the improvement of her performance. Following that it gave advance notice of the termination and gave the Complainant a hearing and an opportunity to defend herself and allowed her access to her employment record. It measured her performance and was able to assess the level of underperformance. The termination took place more than eight months after the commencement of the PIP and the date of the warning.
33. In our view, the Respondent has clearly satisfied the procedural and substantive requirements. It complied with the statutory requirements as to warnings, assistance to the Complainant, offering her an opportunity to defend herself and setting out its reasons for termination. It also devoted much time to aiding the Complainant by coaching and mentoring her and by one-on-one weekly meetings.
34. We find that the decision to terminate the Complainant was not unreasonable or unfair or in breach of the provisions of the Code. In the circumstances we dismiss the complaint.

Complainant's application to extend time for filing submissions

35. At the end of the trial we gave directions for the filing and service of written closing submissions by the parties. The Complainant was required to file her submissions first. She did not file them and after a lapse of time we varied the directions by order dated 25 August 2025. We permitted the Respondent to file its submissions first and the Complainant to file a reply limited to the arguments raised by the Respondent. The Complainant's reply exceeded the permitted number of pages. She applied for an extension on 8 October 2025. There was no objection by the Respondent. We accepted her reply submissions and read them. In the circumstances we have treated the Complainant's reply submissions as properly filed.

Costs

36. We will hear the parties on whether there are any exceptional circumstances in this matter that should give rise to an Order for costs.

By Order
Labour Arbitration Tribunal

Samuel Jack Husbands
Chairperson

Dancia Penn OBE KC
Arbitrator

John Carrington KC
Arbitrator