VIRGIN ISLANDS

LABOUR CODE, 2010
(No. 4 of 2010)

IN THE LABOUR ARBITRATION TRIBUNAL

Case No. BVILAT2023/001

BETWEEN

HENRY PRINCE **COMPLAINANT**

AND

BITTER END YACHT CLUB LIMITED **RESPONDENT**

REASONS FOR DECISION

BEFORE: **Samuel Jack Husbands**, Chairperson, and **John Carrington KC** and **Zebalon McLean**, arbitrators

HEARING AND SUBMISSIONS ON: 1 February 2024 and 28 February, 15 April, 29 May and 26 June 2025

DECISION ON: 24 October 2025

IN ATTENDANCE: (1) Henry Prince, the Complainant
(2) David Penn, legal practitioner for the Complainant,
(3) Lauran Hokin, director of the Respondent
(4) Jermaine Case, legal practitioner for the Respondent, instructed by George Henry Partners LP
ADDITIONALLY: (5) Malisa Ragnauth-Mangal, as Secretary to the Tribunal

Summary

1. The Complainant was employed by the Respondent as Executive Chef from about 28 February 2017 to 2 September 2021. He claims he was terminated in circumstances which amounted to wrongful or unfair dismissal. He seeks compensation. The Respondent claims it reorganised its business to improve efficiency, combined the positions of Executive Chef and

Director of Food and Beverage, eliminated his position as Executive Chef and made his position redundant and he was dismissed for that reason under sections 89(1) and (2) of the Labour Code (**the Code**). There was an exchange of correspondence between the parties leading up to the termination from 25 March 2020 to 14 April 2021. The Respondent claims to have combined or merged the role as Executive Chef with that of Director of Food and Beverage to create a single Director Restaurants and Food and Beverage **(Director of Restaurants)**. The Complainant filed the Dispute Claim Form with the Labour Department on 3 September 2021.

2. The Respondent advertised the new position of Director of Restaurants in the newspaper on 28 August 2021 [**page 109**]. This was followed by the termination letter of 2 September. The Complainant applied by letter dated 9 September 2021 to fill the position of Director of Restaurants. He was not re-employed. The Respondent appointed Kevin Fawkes instead. Mr Fawkes was a non-belonger. The Respondent felt Mr Fawkes possessed global and 5-Star restaurant experience and he would give the Respondent the confidence that he would be able to manage the front and back house without supervision. The ad did not mention global or 5-Star restaurant experience or Michelin training. The Respondent also considered that the Complainant lacked the skills, experience, professionalism and managerial capabilities needed for the job. For example, while the Complainant's role as Executive Chef related to the management of food preparation and stewarding and the co-ordination of duties with the Food and Beverage Director, the merged position contained more "expansive" responsibilities including directing and supervising back house facilities. The Respondent did not think the Complainant met the requirements for the merged post. The Complainant's case is that his termination was a case of unfair dismissal dressed up as a redundancy.

3. The Respondent filed an affidavit of Lauren Hokin, a director, on 23 June 2023 [**page 5**]. The affidavit stood as its Response. In the affidavit Ms Hokin referred at paragraphs 7 to 9 to a transcript of the meeting held between the Complainant and Mr Brizio and Ms Creque, managers of the Respondent, on 20 August 2021. The transcript was based on a secret recording made by the Complainant [**pages 98-100**].

4. Consequent upon the termination, the Respondent made payments to the Complainant totalling $24,713.25 for two weeks' salary in lieu of notice, accrued but unused vacation pay, arrears of salary to 2 September, and severance pay for each year of service from 20 December 2016 to 2 September 2021 [**page 114**]. Ms Hokin referred [**page 7 paras 15 and 17**] to the job description of the new position [**page 136**] and old job description [**page 35**] as well as the old Food and Beverage Manager position [**page 134**]. The Respondent's plan was designed to promote a change of gears as it were and resume business under a new and more expensive business arrangement, which Ms Hokin later termed "BEYC 2.0", with a chef possessing global and Michelin-star and global and 5-Star experience [**page 7 para 18 to page 8 para 21**]. The new position would be substantially different from the old. The new chef would give the confidence that he could manage front and back offices without supervision and would have then requisite skills, experience and professionalism and management capabilities. [**page 8 para 21**]. The Respondent concluded that the Complainant did not meet their requirements.

5. On 14 January 2022 the Labour Commissioner, having failed to achieve a settlement, transmitted the dispute to the responsible Minister pursuant to section 26(2) of the Code. The Minister also failed to achieve a settlement and on 25 April 2023 he referred the matter to the Tribunal for settlement pursuant to section 28(1) of the Code. The reference by the Minister included a term that the Complainant was seeking compensation for unfair dismissal in August 2021.

6. The first case management hearing took place on 9 November 2023. Trial was set for 1 February 2024. There were technical problems with the internet link and the hearing was adjourned. Unfortunately, counsel for the Complainant passed away shortly thereafter. There were a number of attempts to restart the trial but it was not until 28 February 2025 that the trial resumed. Hearing continued over to 15 April. At the end of the trial directions were given for closing written submissions and judgment was reserved.

Statutory provisions governing redundancy and termination

7. Section 30(3)

> (3) The Tribunal shall not make an order as to costs except for exceptional reasons which the Tribunal considers appropriate.

8. Section 81

> (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.

9. Section 85

> (1) In any claim or complaint arising out of the dismissal of an employee, it shall be for the employer to prove the reason for the dismissal.
> (2) In the circumstances referred to in section 83, it shall be for the employee to prove the reason which made the continuation of the employment contract unreasonable.
> (3) The test as to whether or not a dismissal was unfair under section 82 or 83 is whether or not, under the circumstances the employer acted unreasonably.

10. Section 89

> (1) The employment contract of an employee may be terminated with notice, or with pay in lieu of notice, for any valid and fair reason connected with the capacity or conduct of the employee, or the operational requirements of the undertaking, establishment or service.
> (2) Without derogating from the generality of subsection (1), notice of termination may be given by an employer in any of the following circumstances:

(a) where two medical practitioners certify that the employee is unfit to continue in employment because of an incapacity of the mind or body which has lasted for at least six months and which is likely to be permanent;
(b) where the employee could not continue to work in the position held without contravention of a provision of a law; or
(c) where the employee is made redundant.
(3) For the purposes of the Code "redundancy" means where the work required of the employee is affected because
(a) the employer has modernised, automated or mechanised all or part of his or her business;
(b) the employer has discontinued or ceased to carry on all or part of his or her business;
(c) the employer has reorganised or relocated his or her business to improve efficiency;
(d) the employer's need for employees in a particular category has ceased or diminished;
(e) it has become impossible or impracticable for the employer to carry on his or her business at its usual rate or level or at all, due to a shortage of material, a mechanical breakdown, a *force majeure* or an act of God; or
(f) a reduced operation in the employer's business has been made necessary by economic conditions including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

11. Section 99(4)

(4) An employer who terminates the employment of an employee on the grounds of redundancy shall give preference to the reemployment of that employee if he or she decides to hire a person, within a period of six months from the date of the termination, to perform duties that are the same or substantially the same as those that were formerly performed by the employee, and shall make every reasonable effort to notify that employee of the vacancy.

12. Section 104

(1) An employee whose period of continuous employment is at least twelve months is entitled to severance pay upon termination of such employment on any of the grounds specified in paragraphs (a), (b) or (c) of section 89(2) or in section 93 or 94.
(2) A periodic employee shall be deemed to satisfy the conditions as to length of service if he or she had worked with the same employer and any predecessor employer for at least a consecutive four-year period.
(3) An employer who lays off an employee for a temporary period shall inform the employee in writing and indicate the proposed date for his or her re-engagement prior to the lay-off.
(4) Where a periodic employee is employed by two or more employers to perform duties that benefit the same person or associated companies, then two or more employers shall be jointly responsible for severance payment of the employee.
(5) An employer who fails, without reasonable excuse, to pay severance pay within two months of the date on which payment of severance pay is due commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

(6) Where an employer is convicted of an offence under subsection (5), the Magistrate shall, in addition to any penalty under subsection (5), order him or her to pay the employee an additional ten per cent of the amount of severance pay to which the employee is entitled.

Agreed Issues

13. The parties filed a statement of agreed issues for consideration by the Tribunal. The issues were as follows:

a. whether Complainant's work was affected at the time of the dismissal because the employer reorganised or restructured its business (**the Restructuring)**,
b. whether the Respondent combined the roles of Executive Chef and Food & Beverage Manager into the new Director of Restaurants position,
c. whether the Director of Restaurants position was different from the Executive Chef position,
d. whether, at the time of the dismissal, the Restructuring was intended to improve efficiency,
e. whether the Director of Restaurants position was the same or substantially the same as the Executive Chef position and if so whether the Complainant should have been given preference in rehiring for such,
f. whether the Complainant was qualified for the Director of Restaurants position and whether the Respondent's decision not to employ him in the this position genuinely related to his capacity or conduct in relation to the employment in question,
g. whether the reason for the dismissal was within the "band of reasonable responses"
h. whether, at the time of the dismissal and re-hiring process,
    i. the actions of the Respondent were fair, and
    ii. the "protected characteristics" (for the purpose of protection from discrimination) was a necessary condition of the occurrence of any less favourable treatment to the Complainant by the Respondent.
i. whether it was appropriate for the scope of the Respondent's liability to extend a less favourable treatment so caused to the Complainant, and
j. whether the Complainant took sufficient steps to mitigate his loss.

The evidence

14. The starting point must be the meeting on 20 August 2021. The Complainant was invited to a meeting with Mr Brizio and Delores Creque. There were no frills, no small talk, no introduction. Mr Brizio opened and told the Complainant they were merging back and front of house, going for 5-star service and needed someone with global experience, a strong leader and with the right character and that he was not that person. Mr Brizio said they would offer him a separation package. He was asked to resign. He was offered compensation He was told it was his last day. It was not a matter for discussion.

15. The Complainant's duties as Executive Chef included kitchen management and the creation of menus. Shortly after he joined the Respondent's employment two disastrous hurricanes struck in 2017. The resort effectively closed. It did not reopen until December 2021 [**para 14**

page 53]. During the period when the resort was closed, the Complainant operated the staff kitchen. He was not required to undergo performance reviews.

16. The stated redundancy event fell within section 89(3)(c) of the Code. The Respondent considered the Complainant lacked the relevant skills, professionalism and managerial capability it desired of the new Director of Restaurants. To make the point the Respondent set out a number of the Complainant's perceived deficiencies.

17. The Complainant disputed the termination letter and stated at paragraphs 13 to 33 of his Reply [**pages 13-16**] that:

    a. the redundancy was not in accordance with section 89(3) of the Code in that the Respondent did not specify what work was required of him or what reorganisation was needed to improve efficiency,
    b. he was already carrying out the work of both of the roles before the Restructuring and the merger of the two positions,
    c. he was not given preference for re-employment as is required by section 99(4) of the Code,
    d. the termination letter outlined various performance issues on his part and the Respondent therefore needed to show that the reasons were put to him and in any event the Respondent would be put to proof of the reasons,
    e. in effect, his termination was an unfair dismissal and not a redundancy, e.g. the newspaper advertisement did not provide any details of the merged provision that were different from his job description and the job description for the merged position was never advertised,
    f. the lack of an incumbent's "more *expansive* experience" is not a reason for redundancy nor is it a reason to hire a non-belonger in place of a belonger,
    g. he was made redundant before he had an opportunity to apply for the merged position which meant his application would not be considered,
    h. the job description did not require that the successful applicant possess Michelin or 5-star deluxe experience,
    i. the Respondent must establish that no other position of a similar role ~~such as Executive Chef~~ in which the Complainant could have been employed,
    j. the newspaper advertisement represented the comparator by which new position could be assessed against the old one to see if the Complainant met the new requirements.

18. The Complainant stated further that the merged job had been offered to Mr Fawkes even before he was made redundant and, in reality, Mr Fawkes was employed because of his personal relationship with Mr Brizio. He asserted he was qualified for the merged job and there had been no complaints about his performance.

19. In his rejection letter dated 6 October Mr Brizio stated the Complainant did not possess the skills to successfully fulfil the role and gave a list of 10 areas in which he lacked experience. Mr Brizio also stated that over the previous 12 to 24 months the Complainant's lack of performance, leadership and failure to take initiative reinforced their conviction that he was not a suitable for the merged role.

20. Ms Hokin oversaw the corporate strategy and the design and redevelopment of the Bitter End Yacht Club and she liaised with Mr Brizio and Ms Creque in the Restructuring. In her first witness statement Ms Hokin outlined what was being attempted by the Respondent and at paragraph 24 stated it was a legitimate exercise [**page 55**]. She offered an explanation of the restructuring exercise at paragraph 32 [**page 56**]. She considered that the Complainant's work would be affected because only one person was now required instead of two [**page 57 para 33**] and she outlined the differences between the two roles at paragraphs 34 to 41 at [**pages 57-58**]. Finally, she considered his CV did not match that of Mr Fawkes and that, from matching it, he had a list of deficiencies set out at paragraphs 1 to 7 of the termination letter although she was quick to point out he was not being dismissed for unsatisfactory performance [**pages 58-59 paras 44 to 48**]. She also confirmed at paragraph 8 of her Second Witness statement [**page 67**] that there were no formal performance reviews and she repeated the Complainant was not terminated for performance-related reasons. The Respondent wanted to cater to the higher end of the market and wanted its restaurants, bars and other dining facilities to have the look and feel of a first-class dining facility [**pages 68 para 14**]. In its judgment, based on the information before it, the Complainant considered it acted reasonably [**pages 68 para 16**].

The redundancy regime

21. The Respondent's case is based on the reorganisation of its business to achieve efficiency under section 89(3)(c) of the Code. The authorities tell us that cases "concerning redundancy arising out of a reorganisation always cause difficulties" – see for example **Safeway Stores plc v Burrell** [1997] ICR 523 at page 531B quoting Phillips J in **Robinson v British Island Airways Ltd** [1978] ICR 304 at page 308.

22. The Respondent must also show, if this is pursued, that if it hired a person within a period of six months from the date of the Complainant's termination to perform duties that were the same or substantially the same as those that were formerly performed by the Complainant, that the Complainant was notified of the vacancy and given preference in filling it – see section 99(4).

23. Both parties accept the position expressed by **Harvey on Industrial Relations and Employment Law** (2008) that the genuineness of a decision to make an employee redundant could be scrutinised and that the employer is required "…to provide evidence to show that the alleged reason for the dismissal does have some basis in fact, and that the proper business decision has been reached".

24. In this case, however, judging from the agreed issues, there is no real dispute between the parties that the Complainant had been terminated and that there had been a reorganisation. The facts the Respondent must establish are therefore limited to (i) whether the work required by the Complainant was "affected by" the reorganisation – see the definition of "redundancy in section 89(3), (ii) whether the reorganisation was in fact the cause of the dismissal, and (iii) whether, if a replacement was hired within six months, whether the Complainant was given preference to the position and was notified about it. The Respondent must also, all things being equal, appoint a belonger in preference to a non-belonger – see section 117(1).

25. Mr Case, counsel for the Respondent, has argued at paragraph 42(iii) of his closing submissions, that the reasonableness requirement imposed by section 85(2) of the Code, does not apply to termination by way of redundancy. Counsel accepts, however, that the Tribunal may examine the circumstances of the termination to determine whether all the requirements under section 89 have been met. In other words, we still have to determine whether the case genuinely falls within section 89.

Consideration of the agreed issues

Whether Complainant's work was affected by the Restructuring

26. There is no doubt that after the combination of the roles of Executive Chef and Food & Beverage Manager into one Director of Restaurants, there was clearly no role for Executive Chef. That was the whole purpose of the Restructuring. The Respondent made what it termed a "legitimate" business reason for the combination. The Tribunal will not substitute its own reason for that of the employer unless it is clear that decision was clearly unreasonable. The Respondent set out a basis for the combination of both roles. We note that Mr Brizio did not give evidence. He did refer to himself at the meeting on 20 August as being the messenger but he did concede he had been discussing the matter for many months with the owners and one Kerri [**top of page 99**] for the management, implying that the ultimate responsibility was not his. But he appears to have been deeply involved in the restructuring process even if he was not a decision maker. Ms Hokin was the sole witness for the Respondent. We conclude that the role of Executive Chef was negatively affected by the reorganisation as the Respondent needed a more senior chef to replace both the Executive Chef and the Food & Beverage Manager.

Whether the Respondent combined the roles of Executive Chef and Food & Beverage Manager into a new Director of Restaurants and Food & Beverage position

27. As a matter of fact, the Respondent did combine the roles into one. That is the clear evidence of Ms Hokin. The Complainant must have acknowledged this by applying for the merged job. The only question is whether it was a substantial combination or a combination only in appearances. The combined Director position enabled the Respondent to get the job of Executive Chef and the restaurant visionary done by one person. Tribunal does not enquire into the soundness and correctness of the business decision or its success in the improvement of efficiency.

Whether the Director Position was different from the Executive Chef position

28. This is the key question. Ms Hokin explained what the Complainant's job and the new job involved. It must be noted that she was the Respondent's sole witness on these two positions. She was a director who oversaw the corporate strategy and the design and redevelopment of the office and played a close role in developing strategy for leadership and defining the key needs of the management organisation. Her father was the owner. Her family's involvement in the property went back to 1964. She would have been closely familiar with the organisation for many years [**pages 52-53 paras 1-7**]. There is no reason, simply because she was not kitchen personnel, that should cause us to doubt the validity of her views as to the roles of the various specialist chef positions and what the roles entailed. She impressed us as a witness of the truth and with sufficient knowledge and understanding of the front and back of house and food and beverage management and preparation and the restaurant ambience.

29. She gave an explanation of the reason for the merged position and what each position entailed. At paragraph 31 of her first Witness Statement she likened the new Director of Restaurants position to the emerging "Chef and B" position [**page 56**]. She then gave synopses of the requirements for the Director of Restaurants and the Executive Chef positions with full job descriptions at pages 136 and 72. It is clear the positions are different. Prior to Hurricane Irma in 2017 the Complainant served as Executive Chef and a Mr Riley as Food and Beverage Manager. The Food and Beverage Manager position had been vacant since the hurricane. The Executive Chef position was not vacant but the role had not been performed because the resort closed after the hurricane.

30. Having considered Ms Hokin's evidence and perused the job descriptions, we are not in doubt that the Complainant's role and the new Director role were sufficiently different and represented two separate and distinct toles.

31. The disclosure of the reorganisation was somewhat dramatic and high-handed and could have been managed by consultation, especially seeing it had been in the planning for several months before it was dropped on the Complainant, to use his language, at the meeting on 20 August 2021. Representatives of employees who are represented by a worker's union are likely to receive a fair amount of advance notice. The Court of Appeal adverted to this in a passage in **Cove Hotels (Antigua) Ltd v Walling** (ECCA, 1994). The passage bears repeating:

> "It cannot be over-emphasised that in handling redundancy situations a reasonable employer should be guided by the principles of good industrial practice. One such principle is that of consultation. This was stressed by Browne-Wilkinson J. as he then was (now Lord Browne-Wilkinson) in Freud v. Bentalls Ltd. (1982) I.C.R.443 where he stated "Consultation is one of the foundation stones of modern industrial relations practice". Also Slynn J., as he then was (now Lord Slynn) in Spillers French Holdings Ltd. v. U.S.D.A.W. (1980) I.C.R. 31 had this to say: "The consultation may result in new ideas being ventilated which avoid the redundancy altogether. Equally it may lead to a lesser number of persons being made redundant than was originally thought necessary. Or it may be that alternative work can be found during a period of consultation."

32. Consultation, though desirable, is not a legal requirement. We do not infer anything sinister from the lack of consultation or that this somehow undermined or tainted the redundancy or affected its genuineness in this case though it could have this effect in some cases. We do not find that the reorganisation was made up or that it was not designed to improve efficiency and, if it was necessary for our decision, that it was unfair or unreasonable.

Whether the Complainant was given preference for re-employment as is required by section 99(4) of the Code

33. The Complainant applied for the new post and was refused – see his letter dated 9 September 2021 [**page 113**] and the Respondent's reply dated 6 October [**page 116**]. The obligation to reemploy under section 99(4) arises after termination. It does not affect the validity of the termination. It is a requirement separate and distinct from termination. No claim as included

in the Dispute Claim Form for a breach of this section. It is difficult to include it. The Dispute Claim Form must be referred to the Labour Commissions under section 181 of the Code within six months of the ground for the dispute or complaint coming to the knowledge of the employee. The requirement under section 99(4) extends six months after termination.

34. A claim under this section was first included in paragraphs 17 and 18 of the Reply [**page 14**]. The claim, as I understand it, is that the Complainant should have been re-employed in the Director position. If, as we have found, the Director position was a new position and the duties were not the same or substantially the same as those that were formerly performed by the Complainant, I do not see how section 99(4) would entitle the Complainant to preference in respect of appointment to that position.

35. At paragraph 26 of his First Witness Statement [**page 32**] the Complainant complained further that he had not been offered the position of Executive Sous Chef, a position which he stated was similar to that of Executive Chef which he had filled immediately prior to his termination. Ms Hokin explained at paragraph 15 of her Second Witness Statement [**page 68**] why he had not been appointed. Her explanation was that, first, the Complainant never applied for the position. This is relevant. It is an employer's duty under section 99(4) to notify the employee of the position. Second, she stated that the Executive Sous Chef position was not similar or substantially similar to that of the Executive Chef position. She did provide details in cross-examination and re-examination. She denied she was not aware of the difference between the grades of Cook, Sous Chef, Executive Sous Chef, and Chef. Although she is a business owner and not a restaurant manager or a resort manager she was aware of the concept of the Chef and B, as the leader of the merged position of front and back of house is sometimes referred to, and she was able to defend what the merger was designed to achieve. There are often good reasons for not offering an employee being made redundant a position lower in seniority to that which he occupied.

Whether the Complainant was qualified for the Director Position

36. The Complainant was not a Michelin or global 5-star chef. He had no international experience. These were the qualifications and experience the Respondent was looking for in a chef to take the restaurant to a higher level. They were not unreasonable requirements. We note, however, the ad did not list these as requirements for the Director of Restaurants position. On an objective assessment, the Complainant did not possess qualifications the Respondent considered necessary for the position and Ms Hokin was satisfied that Mr Fawkes did.

Whether the Respondent's decision not to employ the Complainant in the Director Position genuinely related to the Complainant's capacity or conduct in relation to the employment in question

37. There is no basis for a finding that making the Complainant redundant was not connected to his capacity or conduct as contemplated by section 89(1). We stated above there could have been consultation to make the change less painful and easier to "sell". This may have removed suspicion that the Complainant was targeted. Ms Hokin stated he was not the only employee made redundant. She mentioned in re-examination, for example, that the positions of marina manager and water sports manager had been combined. In any event the resort was emerging in August 2021 from 4 years of closure. All the objective facts however point to a genuine

organisation rebranding and redevelopment that affected the Complainant in his capacity as an employee.

Whether the reason for the dismissal was within the "band of reasonable responses"

38. We are not called upon to determine whether the reorganisation was reasonable, We need only determine that it was genuine and that the Complainant was fairly treated. If the reorganisation or the redundancy of specific employees who are affected by the reorganisation under section 89 must be within the band of reasonable responses, I am of the view the termination was within such a band. The reorganisation called for the merger of the two roles Executive Chef and Food and Beverage Manager and the consequential elimination of the Complainant's role. While personally a painful pill for a devoted employee to swallow, I do not find it was an unreasonable part of the strategy for corporate development nor the Complainant's termination an unreasonable consequence.

Whether it is appropriate for the scope of the Respondent's liability to extend a less favourable treatment so caused to the Complainant

39. This ground was not properly articulated and in any event we did not need to consider it.

Whether the Complainant took sufficient steps to mitigate his loss

40. It was not necessary to consider this issue because the complaint is dismissed and accordingly no order will be made for the payment of compensation claimed at part B of the Schedule of Loss (loss of basic pay and loss of future earnings) and Part C (compensation for injury to feelings and interest thereon) [**pages 23-24**]

Costs

41. The Complainant did not claim costs in the Dispute Claim Form or in his Reply and no claim for costs was included in the Affidavit of Ms Hokin which stood as a Response. Parties are not required to claim costs in their written cases. Under section 30(3) of the Code the threshold for the award of costs is very high. A costs order may only be made for exceptional reasons.

Costs of the adjourned hearing on 28 June 2024

42. On 28 June 2024 after the trial had been adjourned at the Complainant's request the Tribunal made an order that he pay the Respondent's costs lost by the adjournment. The Respondent filed a costs schedule. We will assess those costs at the same time we assess the costs of the proceedings as stated in **paragraph 43-45** below.

Costs of the proceedings

43. In his written closing submissions Mr Case included submissions on costs of the entire proceedings. In what may be termed as the boldest of bold submissions he claimed costs on a full indemnity basis regardless of the outcome. That seems like a far stretch from the standard of "exceptional circumstances". Counsel relied on **Stallard v Bishop & Ors** CV 1200 of 2011 (No.2) (Unreported) 7 [RAB/14/60-76] for the proposition that section 30(3) of the Code does not limit the Tribunal to a results-based outcome and that the successful party may be ordered to pay the costs of the unsuccessful party. We do not have to decide that point because Mr Case's client is indeed the successful party.

44. Mr Case bases his request for costs on two grounds:

a. the lax manner in which the Complainant conducted the litigation, and
b. that the unreasonably large award sought by the Complainant likely prolonged the litigation unnecessarily and the may have caused the parties to incur more in legal fees than the amount the Complainant could have recovered if successful,

45. Costs orders are meant to be the exception rather than the rule in proceedings before the Tribunal. The Complainant claimed an award of compensation of $700,000 including $608,000 for loss of future earning and $27,000 for injury to feelings. These claims were extravagant. Except for the claim for injury to feelings, we would not describe them, however, as vexatious, abusive, hopeless. Even if successful, the Complainant would have been limited to future earnings down to the date of the trial and would not have received compensation for hurt feelings. He did not receive any compensation beyond what was offered originally on termination. The Respondent will say it successfully defended an exaggerated claim for $700,000. In applying the standard imposed by section 30(3) of the Code, the great disparity between what was claimed and what could have been recovered, even if the Complainant were successful, could be considered an exceptional circumstance. In short, a complainant who presents an inflated claim for an amount far in excess of the maximum he could have reasonably recovered is at risk of an adverse costs order. We think this is one such case.

46. I will order the Complainant to pay the Respondent an amount not exceeding $10,000 to be assessed if not agreed within 21 days.

Summary

47. There is no dispute between the parties of the amount of notice or pay in lieu of notice to which the Complainant was entitled. I find the Complainant was dismissed with adequate pay in lieu of notice and for a valid and fair reason of redundancy under section 89(3)(c) of the Code and that the termination was reasonable. For these reasons, I would dismiss the complaint.

48. Regarding the costs of the proceedings:

a. the Complainant shall pay the Respondent its costs of the proceedings in an amount not exceeding $10,000,
b. the parties shall attempt to agree these costs by the parties by **4.00pm** on **Friday 7 November 2025**,
c. in the event the parties fail to reach agreement, the Respondent shall submit a schedule of costs to the Tribunal by **4.00pm** on **Friday 21 November** 2025 and the Complainant shall, if so advised, file a response by **4.00pm** on **Friday 5 December 2025**.
d. the Tribunal shall thereafter assess these costs on the papers.

49. The Tribunal will assess the costs ordered to be paid on 28 June 2024 by separate judgment.

By Order
Labour Arbitration Tribunal

Samuel Jack Husbands
Chairperson

LABOUR ARBITRATION TRIBUNAL
JAN 12 2026
BRITISH VIRGIN ISLANDS

John Carrington KC
Arbitrator

Zebalon McLean
Arbitrator