**VIRGIN ISLANDS**

LABOUR CODE, 2010
(No. 4 of 2010)

**IN THE LABOUR ARBITRATION TRIBUNAL**

**Case No. BVILAT2024/026**

**BETWEEN**

**GLENDALIZ PAYANO GREEN** **COMPLAINANT**

**AND**

**MARINEMAX VACATIONS LIMITED** **RESPONDENT**

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**REASONS FOR DECISION**

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**BEFORE:** **Samuel Jack Husbands**, Chairperson, and **Zebalon McLean** and **Yvonne Crabbe**, Arbitrators

**TRIAL AND SUBMISSIONS:** 10, 11 and 16 April 2025, 6 June and 4 July 2025
**DECISION ON:** 24 October 2025

**IN ATTENDANCE:**
(1) Glendaliz Payano Green, the Complainant
(2) David A. Penn, legal practitioner for the Complainant
(3) Clarence Malone, Director of Operations of the Respondent
(4) Monique Peters of Travers Thorp Alberga, legal practitioners for the Respondent

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

**Summary of the evidence**

1. The Complainant worked for the Respondent from 10 October 2013 to 23 December 2022, when she was summarily dismissed. She had been employed under a contract of employment dated 1 May 2015 [**page 62 of the Trial Bundle**]. She commenced these proceedings by Dispute Claim Form on or about 19 June 2023 [**page 4**]. In the particulars attached to her

Dispute Claim Form, she claimed reinstatement. In her Reply, she claimed reinstatement and back pay and supported her claim with a Schedule of Loss [**page 22**] in keeping with rule 23(1)(f) of the Labour Code (Arbitration Tribunal) (Procedure) Rules, 2020 (S.I. No. 98 of 2020) (**the Rules**). She is claiming losses of $117,040. The Respondent filed a statement pursuant to Rule 20(1)(f) of the Rules that, in the event the claim succeeded, the remedy of compensation would be acceptable to it.

2. The Respondent is a yacht charter company. Its clients charter yachts in its fleet from its docks located at Nanny Cay Marina. On the return of the yachts at the end of a charter, if all of the provisions are not consumed, what is left (called "**the prog**") is divided among the Respondent's staff. There is a policy that is meant to allow a fair division of the prog among the staff. A written statement of the policy was not in evidence, but none of the parties disputed its existence. Staff are expected to adhere to the policy. Yacht captains may, however, designate a staff member to receive the entire prog. It seems also that each employee has a "prog day" on which they could receive donations of prog from a captain and donations could not be made other than on the prog day.

3. On the completion of a charter on 12 December 2022, it was reported to the Director of Operations, Clarence Malone, that the Complainant and another employee had removed the prog from a yacht in breach of the policy. He received the report from an employee, Ms Persaud, backed up by photos of the Complainant removing the prog from a vessel. The Complainant was approached. She stated she had received permission from the yacht's captain. The photos are not in evidence, and the captain did not give evidence. The photos may not have helped because the fact of the removal of the prog is not denied. What is in dispute is whether it was given to the Complainant and her co-worker by the yacht captain in accordance with the policy.

4. Later on 12 December, Mr Malone sent the other employee a text message stating that she and the Complainant would be suspended. The Complainant must have become aware of this. At about noon she barged into Mr Malone's office, addressed him in a loud and aggressive voice, refused to leave when asked, and as she was eventually leaving, proceeded down the steps using filthy language to him. She then continued outside using profane language in the presence of other employees and an owner of the business, the employees of another company, and the general public. This conduct constituted rude and aggressive behaviour. Mr Malone told her to leave for the day, and she would not be paid. He said this was not the first time she had breached the prog policy. He had seen her do it himself. This was also not the first time she had used indecent language on the job. He had made it clear to her that this behaviour would not be tolerated. She had been warned several times before. Mr Malone clearly had had enough. He described the incident on 12 December as the final straw. He considered she had breached clause 1.44 of the company's service booklet. She had been suspended in 2019 for fighting on the job – see the letter dated 30 June 2019 [**pages 75 and 113**]. What was more, this incident of 12 December 2022 followed a warning letter to the Complainant dated 24 June 2022 for unacceptable behaviour [**page 65**].

5. The Complainant in effect denied breaching the prog policy. She said the prog had been given to her by Captain Dunbar. As a result of Mr Malone's text message to the other employee that he was suspending both the Complainant and the employee, she "reported" to Mr

Malone's office, where he addressed her in an aggressive manner and ordered her to leave his office. The Complainant also complained that another employee had made death threats against her, and Mr Malone had not treated the matter seriously, and now he was threatening to suspend her for a week for something that had absolutely nothing to do with her. It was only in her utter frustration that she expressed her disappointment in a way she should not have done. She wrote an apology dated 28 June 2023, which she placed into evidence as Exhibit GG-2 [**pages 38-39**]. She acknowledged receipt of a warning letter dated 22 June 2022 [**pages 65**] involving an employee (whom we shall call "**Employee A**") and two other employees. She insisted she had done nothing to deserve the warning.

6. On 23 December 2022, Mr Malone issued the termination letter. It was dated 20 December [**page 76**]. He acted on a report submitted by email on 20 December 2022 by Rebekha Persaud [**page 89**]. In the termination letter, he referred to the Complainant's aggressive and "elevated" tone and her open use of profane language directed at him. He also referred to her continued use of profane language to him, even as she left his office, and that other employees and an owner/investor heard and that she continued to carry on loudly and openly, and staff from an adjacent business heard and stopped to listen. He summarily terminated her as of 23 December 2022 and gave her the final cheque. He did not specify the exact rule the Complainant was said to have breached. It matched "rude and aggressive" behaviour in clause 1.44 of the company service handbook [**page 73-74**].

7. I understand the Complainant's "unacceptable behaviour" in the termination letter to be her conduct in barging into Mr Malone's office, her loud and aggressive behaviour, and her open use of profanities in areas of the premises where she could both be seen and heard by others. Paragraph 1.44 of the service handbook at pages 73-74 of the bundle lists several examples of misconduct under the heading Rules of Unacceptable Conduct". The rules include:

   a. refraining from use of indecent language
   b. refusal to comply with directions of a person in charge

8. The above facts are not seriously in dispute. The Complainant, while not conceding the entirety of the allegations made by Mr Malone, submitted the letter dated 28 June 2023 [**page 38**] in which she apologised for her role in creating the environment in his office which led to the circumstances on 12 December 2022. She said she had been frustrated, demoralised, and dejected as she had received three death threats at work and she was threatened with suspension for something she had nothing to do with.

9. Despite the narrow and largely conceded ground for termination, the Complainant's case stretched to death threats by Employee A and to the prog. She tried to justify her action by the Respondent's failure to take her seriously regarding the threats to her life by Employee A, and that, far from being taken seriously, she was suspended for something she did not do. Her case is that while she may have behaved inappropriately on 12 December 2022, the Respondent should have understood the reasons that led to her outburst, the reasons being the death threats, the Respondent's failure to take them seriously, and the unfair accusation of taking the prog in breach of company policy. Much time was spent on the death threats and the prog.

10. The allegation of the Complainant having taken the prog in breach of company policy was a secondary and largely irrelevant issue. Mr Malone acted upon a report in writing by another employee. The issue largely fell away when the Complainant behaved as she did in and outside Mr Malone's office.

11. After her termination, the Complainant engaged the services of a lawyer, Mr Penn, who wrote to the Respondent on 14 June 2023 [**page 115**]. Mr Penn did not deny the reasons stated for the termination. Counsel stated, however (and this is repeated in the evidence of the Complainant as stated above) that the Complainant had acted out of understandable frustration given the death threats by Employee A and the wrongful accusation of taking the prog. Although counsel did not refer to sections of the Code, he alludes to sections 102(1), (2) and (3), which are set out below, that, if it was necessary to impose a sanction, it should have been a sanction short of dismissal. The Respondent did not reply to counsel's letter.

12. The next step was the filing of the Dispute Claim Form by the Complainant. The particulars of her termination were consistent with those stated in her lawyer's letter. She claimed she was dismissed without lawful authority and without sufficient reason. She acted only out of frustration. In the circumstances, her termination was unlawful.

13. Ms Brown gave evidence of an incident in June 2019 between employees including the Complainant. The incident was resolved by issuing a warning letter to the Complainant [**page 113**]. Ms Brown also gave evidence of knowledge of the threats complainaned of by the Complainant. She believed the Complainant had been threatened. She also thought the Respondent had tried to get to the bottom of the dispute between the Complainant and Employee A. Three and a half years elapsed between the 2019 incident and the dismissal. We do not attach much importance to it.

14. Ms Brown did not deal with the termination meeting in her witness statement, but in a separate memorandum dated 20 February 2023 [**page 117**], she stated what transpired at a meeting between Mr Malone and the Complainant just before termination on 23 December 2022. We do not find that there is adequate proof of a termination meeting. Even so, the Complaint was not given advance notice of the meeting to make her participation meaningful.

15. Mr Auguste testified about previous examples of misconduct by the Complainant. They were vague and somewhere in the past. This made it an unreliable indicator of the reasonableness of the Respondent's reaction to present misconduct. They were not documented or placed on the Complainant's employment record, and the Respondent did not act upon them in a timely manner, and must have waived reliance on them.

16. Ms Severino was a witness for the Complainant. She denied breaching the prog policy. She related the circumstances of the threats by Employee A. She also gave an account of the interaction between Mr Malone and the Complainant on 12 December 2022. Her description was mild, even compared to the Complainant's version. It was clear Ms Severino was not forthright about the Complainant's conduct. Her evidence was not helpful.

17. The Complainant sought to introduce evidence that Employee A had attempted suicide, and this ought to be a reason for taking her death threats seriously. The reasoning underlying the

Complainant's position is that Employee A had made a suicide attempt, and this showed she was mentally disturbed and thus more likely to make and carry through death threats. The attempt at suicide was a mischievous allegation that even if proven, ws very unlikely to establish any propensity in Employeee to .make death threats. The threats were reported to the police [**page 20**]. The Tribunal did not allow questions of the suicide. They seemed to border on gossip and hearsay and would not have been probative of any issue in the trial.

18. The Tribunal also did not allow questions concerning the details of allegations of misconduct made by the Complainant against Mr Malone. Mr Penn, counsel for the Complainant, submitted the Complainant did not intend to prove the truth of the allegation, just the existence of a rumour. I did not think that the existence of the rumour by itself was probative of any fact in issue. In any event, the circumstances of alleged misconduct on the part of Mr Malone had nothing to do with the termination.

**Discussion**

19. An employer is required to prove the reasons for the termination – see section 85(1) of the Labour Code 2010 (**the Code**). It must follow that where the employee asserts that the true reason is not that which is stated in the dismissal letter, she must establish that the stated reason could not have been valid and fair, or that some other reason influenced the termination.

20. The conditions for the summary termination of an employee may be summarised as follows:

    a. the person bringing the proceedings must have been an employee,
    b. the reason for dismissal must be connected with the capacity or conduct of the employee or with the operational requirements of the undertaking,
    c. the disciplinary procedures, including a warning in an appropriate case, written reasons for termination, and a fair opportunity to defend oneself, must be complied with, and
    d. the dismissal must be for a valid fair reason and must be reasonable in the circumstances.

21. As stated above, the surrounding circumstances, even if true, were irrelevant. The Complainant has not established that the Respondent did not take seriously her reports of threats to her life. Mr Malone said he suspended Employee A, and he held meetings to try to resolve the differences between the employees. He could not simply terminate Employee A based only on the allegation of threats made by the Complainant. From his witness statement, it would appear that Employee A was the one who ought to have been offered protection from the Complainant.

22. The Complainant was suspended for the remainder of the day on 12 December 2022. She stated, in effect, that her suspension was unlawful because it was not established that she took the prog in breach of policy. No claim is made for compensation for an unlawful suspension, and the suspension has been superseded by the termination. Even if the Complainant is right and she was granted permission by the captain to remove the prog, I would not find that the Respondent's wrong conclusion on the taking of the prog or its failure to terminate Employee A was in any way justification or excuse for the Complainant's conduct or that these were

considerations which would have compelled a reasonable employer to impose a sanction other than termination.

23. The termination letter contained a description of the alleged misconduct and it informed the Complainant of the reasons for termination in sufficient detail to let her know what misconduct she was accused of. It is clear that the Respondent did not comply with the requirements of the Code for a meaningful pre-termination hearing.

24. Section 81(2) of the Code provides as follows:

> "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."

25. The Complainant was handed the termination letter without any advance notice or any discussion. She did not have an opportunity to be heard at the time of termination. She did, however, have an opportunity to be heard in June 2022 when she was summoned to a meeting, the outcome of which was the 24 June warning letter. In the warning letter, it was stated that she has a history of verbal abuse and use of profane language towards other employees, and that she has been warned several times.

26. The warning letter dated 24 June referred to the Complainant's inappropriate behaviour and attached to it were the Spanish and English versions of clause 1.44, indicating the provisions breached (the Complainant is Spanish-speaking). It referred to prior verbal warnings and an ongoing issue/confrontation with other members of staff, and the violation by her of Conduct Codes based on the inappropriate behaviour. The context in which it was issued is not clear. Mr Malone held separate meetings with Employee A and the Complainant. He tried to conduct a joint meeting with them on at least one occasion. The two women shouted over one another in Spanish, and he aborted the meeting. The dates of the separate meetings and the failed joint meetings are not given. Mr Malone convened another meeting on 10 June 2022 or 10 July 2022 at which the Complainant and Employee A, as well as Ms Severino and Ms Faulkner, were present. The meeting was held to address "ongoing issues, and verbal confrontation" between the four ladies – see paragraph 5 of Mr Malone's witness statement at page 58. Also present at the meeting were Fayola Brown, the Department Manager, and Tonny Tomas, the Stores Assistant, who was there as an interpreter.

27. Sections 102 and 103 of the Code provide as follows:

Section 102:

> (1) An employer is entitled to take disciplinary action other than dismissal when it is reasonable to do so under the circumstances.
> (2) For purposes of this section, "disciplinary action" includes in order of severity - (a) a written warning; (b) suspension from duty for a period not exceeding one week without pay.

(3) In deciding what is reasonable under the circumstances pursuant to subsection (1), the employer shall have regard to the nature of the violation, the terms of the employment contract, the employee's duties, the pattern and practice of the employer in similar situations, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.
(4) Where action is taken by an employer in accordance with this section, he or she shall advise the employee concerned in writing of the misconduct or action in breach of the employment contract and of what steps the employer is likely to take in the event of any repetition of the behaviour in respect of which the disciplinary action is taken.
(5) A complaint that any disciplinary action taken against an employee was unfair or unreasonable may be made by the employee to the Commissioner pursuant to section 26

Section 103:

(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.

28. The warning complied with section 102(4). As the subject of the meeting was an ongoing matter, I am satisfied that the Complaint was aware of the misconduct she was being accused of and that further suspension and dismissal were steps the Respondent was likely to take in the event of repetition. After having held the meeting, Mr Malone must have been satisfied

that the disciplinary charges were proved. He issued a warning. No further termination hearing was required. Section 103(2) provides that the employer may terminate the employee without further notice if the employee is guilty of another similar offence within the next 6 months. There is no doubt that the Complainant was guilty of the misconduct for which she was terminated on 12 December 2022.

29. Mr Malone cited other acts of misconduct going back to 2018. He produced the warning letter dated 30 June 2019. At paragraph 4 of his witness statement, he referred to an ongoing dispute between Employee A and the Complainant and that they each made alleagations of death threats by the other. Section 103(4) provides that the employer shall be deemed to have waived its right to terminate the employment if it has failed to do so within a reasonable time after having knowledge of the misconduct. The intent of this provision must be to prevent employers "digging up the dead" and relying on long-forgotten instances of misconduct. We do not, therefore, attach any current importance to the older allegations against the Complainant.

30. Relying on section 103(2), we do not consider that a formal second hearing was necessary on or after 12 December 2022. The Complainant was creating a massive scene, verbally abusing her boss, and she has had a history of unacceptable conduct and had received a warning only 6 months prior to termination. In the circumstances, we do not find her dismissal was unfair or unreasonable.

31. Even if the warning of 24 June 2022 was not valid for the purposes of section 102 of the Code, and must be disregarded so that reliance for the termination has to be placed only on the incident of 12 December 2022, the Tribunal would have found that the one act of misconduct on 12 December 2022 ws capable of justifying a reasonable employer in terminating the Complainant. In **Henry v Mount Gay Distilleries Limited (Barbados)** [1999] UKPC 39 a decision of the Privy Council cited by Ms Peters, counsel for the Respondent, it was recognised in appropriate circumstances of summary dismissal at common law could be justified by one act of misconduct "if there has been a breach of one or more duties of the employee and such breach constitutes a repudiation of the contract of employment as being inconsistent with the continued employment of the employee" see [1999] UKPC 39 at paragraph 42. It is worth noting that the appellant had been emplotyed by the respondent for 40 years and that his case was one for wrongful dismissal.

32. If we are wrong and a second hearing was necessary after the warning of 24 June, we now consider the effect of the lack of a hearing and advance notice. We accept that there are rare cases in which there is a doubt whether or not the employee would have been dismissed but for a hearing. This element can be reflected by reducing the normal amount of compensation in proportion to the chance that the employee would still have lost his employment – see **Polkey v A E Dayton Services Ltd** [1987] IRLR 503. This could only be applied in the clearest of cases and most often in cases where the misconduct is admitted and no sufficient exculpatory evidence is provided.

33. We consider this to be one of those rare cases. The misconduct was clear, open and pronounced and directed at the person in charge. The Complainant was given a statement of reasons, and she was also given a statement of her misconduct in June 2022, even if the letter

2022 was not a warning that could be relied upon to justify the termination. We also take into consideration that the Complainant had not offered any serious alternative view of the facts. She relied on irrelevant factors of the alleged threats by Employee A and the alleged failure by management to do something about them. She also relied on what she saw as the unjust threat of suspension for something she had not done.

34. The evidence as a whole of the loud and aggressive abuse directed at Mr Malone, a senior officer of the Respondent leave us in no doubt that the Complainant was guilty of serious misconduct for which it was reasonable to terminate her. We remind ourselves that the test (set out in section 85(3) of the Code) of whether or not a dismissal is unfair is whether or not the employer acted reasonably in the circumstances. We also remind ourselves that we should refrain from substituting our own view for the reasonable view of the employer. We have rejected as irrelevant the explanations that she offered to be taken into account to reduce the seriousness or severity of her conduct, i.e. that she did not take the prog and that her complaints of death threts were not taken seriously. Tribunals are often reminded not to substitute their own views for those of the employer if the employer's decision was within a band or spectrum of reasonable responses available to it.

35. We find that the Respondent's decision was reasonable and that the termination of the Complainant was not unfair despite a failure to give her an opportunity to be heard prior to termination.

36. We therefore dismiss the complaint.

By Order
**Labour Arbitration Tribunal**

**Samuel Jack Husbands**
Chairperson

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JAN 12 2026
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