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Notice of Originating Motion (0.8, r.3)

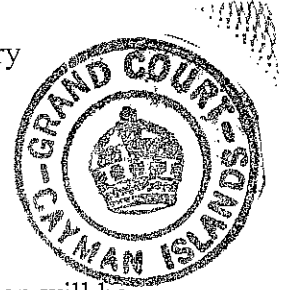
IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 99 OF 2004

In the matter of The Labour Law (2001 Revision) section 79(1)

And in the matter of A decision of the Labour Appeals Tribunal dated 23 January

2004



NOTICE OF ORIGINATING MOTION

**TAKE NOTICE** that the Court at the Law Courts, George Town, Grand Cayman will be moved on 2004 at or as soon thereafter as counsel can be heard, by counsel on behalf of Sunshine Car Rental & Mobile Mechanics for an order to set aside the decision of the Labour Appeals Tribunal.

And for an order that the costs of and incidental to this appeal may be paid by the complainants.

**AND FURTHER TAKE NOTICE** that the grounds of this appeal are:

1. The Respondents left the employers business and took with them documents which were used to record the amount of funds collected by them for providing their services and which documents belonged to the employer. The hearing before the Labour Tribunal held on 21 September 2002 was not fair and breached the rules of natural justice in that those same documents were provided to the Tribunal by the Respondents and the Appellant was not provided with a copy of them or with an opportunity to review them or comment on them. The documents formed the basis of an allegation of theft which if found proved would have supported the decision of the Appellant to terminate the employment of the employees summarily.
2. The decision of the tribunal should have been provided within 28 days of the hearing but was not provided until 21 March 2003 almost six months had passed. Notwithstanding the breach of natural justice, which would vitiate any decision of the Labour Tribunal, the delay in providing the decision in accordance with the timeframe stipulated under the statutory provision further invalidated the decision.
3. The hearing before the Labour Appeals Tribunal held on 9 October 2003 was not fair and breached the rules of natural justice in that the Appeals Tribunal repeated the errors of the Labour Tribunal in that the Appellant was not provided with the documents that

were reviewed by the Labour Tribunal and Respondent but not provided to the Appellant for inspection and comment and which were fundamental to his case.

4. The hearing before the Labour Appeals Tribunal was not a hearing *de novo* since all parties relied on the transcripts of the Labour Tribunal hearing. Such a hearing could not cure the defects, which occurred at that hearing before the Labour Tribunal. The Labour Appeals Tribunal accepts in its decision that a number of serious errors were made by the Labour Tribunal when reaching its decision. There was no evidence to support the findings of the Labour Tribunal. The Labour Appeals Tribunal could not in circumstances where there was no rehearing merely vary or substitute the earlier decision with that of its own.

5. The decision of the Labour Appeals Tribunal should have been provided within 28 days of the hearing but was not provided until 23 January 2004 almost 3 months having passed. Notwithstanding the breach of natural justice, which would vitiate any decision of that Tribunal, the delay in providing the decision in accordance with the timeframe stipulated under the statutory provision further invalidates the decision.

Dated the 20 day of February 2004.

  
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Signature of Applicant's Attorney

TO: The Clerk of the Court

AND TO: Chairman of the Appeals Tribunal, c/o Mr. Walling Whittaker, Director of Employment Relations, 309 – 310 Paddington Place, Godfrey Nixon Way, P.O. Box 10727 APO, Grand Cayman, Cayman Islands

AND TO: Samson Murray Jackson, Attorneys-At-Law, Ground Floor, Sigma Building, George Town, Grand Cayman.

This Notice of Originating Motion was issued by Clyde Henry Allen whose address for service is Woodward Terry & Company, Attorneys-At-Law PO Box 822 GT, West Wind Building, Harbour Drive and Fort Street, Grand Cayman, Cayman Islands, BWI.