



**THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL**

**Applicant:** Mr. Brandon Taylor  
Represented by: Himself

**Respondent:** Mr. David Clyde T/A Bailiwick Satellites & Aerials  
Represented by: Himself

**Tribunal:** Mrs. S Gordon Hardy (Chair)  
Mr. D Etasse  
Mr. A Vernon

**Hearing date:** 17 June 2024

**Decision of the Tribunal**

The Tribunal finds that the Applicant was unfairly dismissed and following a reduction of 15% on the grounds that to do so would be just and equitable in all the circumstances, awards him £15,912.

The Tribunal has decided not to exercise its discretion to award costs. Accordingly, there is no order for costs.

.....  
Signature of the Chairperson

22.07.24  
.....  
Date

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal’s Decision (Form ET3A) are available on application to the Secretary to the Tribunal, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 220025)  
Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).

**The legislation referred to in this document is as follows:**

The Employment Protection (Guernsey) Law, 1998, as amended (the “Law”)

**The authorities referred to in this document are as follows:**

*Cotterill v States of Guernsey* (Guernsey Royal Court Judgment 58/2017) (“Cotterill”)  
*Reynard v Fox* [2018] EWHC 443 (Ch) (“Reynard”)

**Extended reasons****1. Introduction**

- 1.1 Throughout these extended reasons documents within the hearing bundle shall be referred to as by the section number used in the respective bundle (*A/R*), as the parties produced separate bundles.
- 1.2 Brandon Taylor (the “Applicant”) filed an ET1 form with the Employment and Equal Opportunities Service (“Secretariat”) dated 26 July 2023 claiming that he was unfairly dismissed by David Clyde t/a Bailiwick Satellites & Aerials (the “Respondent”).
- 1.3 In his ET2 form the Respondent denied that the Applicant was dismissed unfairly.
- 1.4 Evidence was introduced by the Respondent to show that by letter dated 20 July 2023 from the Respondent (the “Dismissal Letter”) (*7/R*), the Applicant’s employment was terminated with immediate effect, on the grounds of conduct.
- 1.5 As it was agreed that the Applicant was dismissed, the Respondent had the burden of proof on the balance of probabilities to show that the dismissal had been fair.
- 1.6 The Tribunal, consisting of three members, met on 17 June 2024 to hear and determine the Applicant’s complaint. All of the material submitted by the parties, has been taken into consideration by the Tribunal, whether specifically referred to in this decision or not.

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal’s Decision (Form ET3A) are available on application to the Secretary to the Tribunal, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 220025)

Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).

- 1.7 Both the Applicant and the Respondent were self-represented and did not call any other witnesses.
- 1.8 The Tribunal was conscious that neither the Applicant nor the Respondent was legally represented and was anxious that all necessary steps were taken to ensure that the parties had a fair hearing. Accordingly, the Tribunal took care to explain the proceedings during the hearing and to give the parties opportunities to ask questions.
- 1.9 The Tribunal took account of the Deputy Bailiff's general comments in Cotterill and, in particular, those at paragraph 45 concerning the need to give appropriate help to unrepresented parties regarding procedure and possibly also with the case that they wish to present. The Tribunal was also mindful of the commentary in paragraph 44 of Reynard that the fact that a litigant was acting in person was not in itself a reason to disapply procedural rules, orders or directions or excuse non-compliance with them. The exception to that principle being that special indulgence to a litigant-in-person might be justified where a rule was hard to find, difficult to understand or ambiguous.

## **2. Background**

- 2.1 The Respondent is a sole trader who set up his business in 2016 and originally worked alone. By his oral evidence, he demonstrated to the Tribunal that he is clearly committed to his business.
- 2.2 Early in 2022 an opportunity arose for the business to help with the rollout of fibre cables throughout the island and he decided to employ additional staff to carry out this work. In evidence the Respondent admitted he had limited human resources (HR) knowledge, and he had a friend help with HR matters but did not engage any professional HR help.
- 2.3 The Applicant, who had some prior experience as a telecoms engineer, was employed from 24 January 2022 until 20 July 2023 pursuant to a contract dated 24 January 2022 (the "Contract") (1/R).

## **3. Evidence summary**

- 3.1 Mr Clyde explained that he had issues with Mr Taylor's conduct throughout his period of employment and that he believes he followed the disciplinary procedure outlined in clause 10 of the Contract in handling these issues, ultimately leading to the Dismissal Letter.

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 220025)

Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).

- 3.2 The Contract sets out a 3-stage disciplinary process in clause 10 involving:
- A verbal warning in the event that an employee conducts themselves in a way which is not acceptable
  - In the event that expected conduct or standards do not improve, a written warning will be issued
  - Should the expected conduct or standards not improve following a written warning the Employer is entitled to dismiss the Employee with immediate effect. In such circumstances, the right to a one month notice period is relinquished.
- 3.3 In addition, clause 12 provides that notwithstanding any other provision of the agreement, the Employee's employment may be terminated by the Employer without notice if the Employee engages in any conduct justifying summary dismissal.
- 3.4 Mr Clyde recalled 5 or 6 occasions where he had given Mr Taylor verbal warnings (2/R) and he believed that, in each of these cases, he had made Mr Taylor aware that the standard of his work and/or his conduct was not acceptable.
- 3.5 The verbal warnings related to various incidents between 15 February 2022 and 28 March 2023 and in each case, Mr Clyde had concerns about Mr Taylor's performance and/or attitude at work. He gave evidence that concerns were also raised to him about this by business partners and another staff member.
- 3.6 Matters came to a head when Mr Taylor got his work van stuck on the side of the road (referred to as being "beached") on 13 July 2023.
- 3.7 A photo of Mr Taylor next to the van (5/R) was posted on a work WhatsApp group chat and became the subject of jokes in the chat.
- 3.7 Mr Clyde initially joined in with this chat, but when he later saw the photo of Mr Taylor appearing to be laughing next to the beached van, he found the matter more serious, and on 14 July he sent a text message (3/R) to Mr Taylor to say he did not "find this funny at all". He wrote "In fact, I find this very disrespectful and unprofessional" and said that Mr Taylor needed to "buck-up his ideas" and his professionalism at work.
- 3.8 Mr Clyde regarded this text message to be a written warning under clause 10 of the Contract.

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 220025)

Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).

- 3.9 Mr Taylor had been on sick leave immediately prior to the van beaching incident. He came back to work on 13 July and was signed off again from 14 July for one week.
- 3.10 During this later sick leave period, the parties had a further exchange of WhatsApp messages and a telephone conversation as the Respondent had seen the Applicant out in a car whilst on leave. The tone of this exchange also evidenced a strained relationship between the parties.
- 3.11 On 20 July, while Mr Taylor was still on sick leave, the Respondent issued the Dismissal Letter.
- 3.12 In his evidence the Applicant said he had enjoyed the nature of his work with the Respondent but had felt at times that he was “walking on eggshells”.
- 3.13 He recalled most of the incidents referred to by Mr Clyde as giving rise to verbal warnings, but he did not agree with Mr Clyde’s characterisation of the underlying events. For example, Mr Taylor believed he had tried to explain the background to some of the comments from a colleague or business partners, which he had sought to resolve himself, and believed he had resolved, but found Mr Clyde “not interested” in his explanations.
- 3.14 Mr Taylor referred to the *States of Guernsey Employment Relations Service Code of Practice – Disciplinary Practice and Procedures in Employment* (the “Code”), issued under the Law, and argued that there was a lack of proper investigation by Mr Clyde in respect of the matters in relation to which verbal warnings were issued, which did not reflect the recommendations of the Code that disciplinary action should not be taken until the case has been carefully investigated. He also pointed to the Code recommendation that individuals should be informed of complaints against them and given an opportunity to state their case before decisions are reached.
- 3.15 In respect of his alleged lack of care with the work van the Applicant explained that he had offered to pay for earlier van damage (a scrape along the side). (The Respondent accepted this was true).
- 3.16 In relation to the van beaching incident the Applicant said that as he had been off work for a week and had not been driving the van, he had misjudged the length of the van on his return to work on the day of the incident. Colleagues had come to assist him with moving the van and had found the incident funny and taken photos of him next to the beached van, “awkwardly laughing”. When these were posted in a group chat Mr

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal’s Decision (Form ET3A) are available on application to the Secretary to the Tribunal, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 220025)

Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).

Clyde had initially joined in, with inappropriate comments which he later deleted at the Applicant's request, but later sent the text message on 14 July.

- 3.17 Mr Taylor referred to the Code as a basis of recommended best practice to support his argument that a written warning should make clear the consequences of the disciplinary action. He does not believe the text message made that clear. He did not know what was expected of him to improve his behaviour and was not given time to improve his behaviour after the van beaching incident as he was on sick leave and had not returned to work when he received the Dismissal Letter.
- 3.18 He had asked for reasons for the written warning and feels these were not provided.
- 3.19 He therefore believes the dismissal was unfair.

#### **4. Legal framework**

- 4.1 Under the Law, Section 6 (1)(b) provides that in determining whether the dismissal of an employee was fair or unfair it shall be for the employer to show that dismissal was for a fair reason falling within subsection (2).
- 4.2 Fair reasons in subsection (2) include (b) conduct of the employee.
- 4.3 Subsection (3) provides that where the employer has fulfilled the requirements of subsection (1), then, subject to the provisions of sections 8 to 14 [and 15], the determination of the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case.

#### **5. Facts Found**

- 5.1 It was clear from the oral evidence that the parties' working relationship had deteriorated over the term of the employment. The Applicant came from a background of working in a larger corporate business and appeared to find it difficult to adjust to the Respondent's management

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 220025)

Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).

approach and the Respondent appeared to struggle with managing the Applicant on a day-to-day basis.

- 5.2 The Respondent had concerns about the Applicant's conduct and intended to follow a disciplinary process in dealing with these concerns.
- 5.3 When the Tribunal asked a question about the Respondent's basis for terminating the Applicant's employment, being either the clause 10 disciplinary process of verbal warnings, escalating to a written warning, a chance to improve and final termination; or the clause 12 single incident of gross misconduct giving rise to summary dismissal; the Respondent said he had adopted the latter approach. However, this was not wholly consistent with the Dismissal Letter which referred to prior verbal and written warnings.
- 5.4 The Contract implies that time should be given to the employee to improve their conduct after a written warning, but this was not given.
- 5.5 The level of record keeping by the Respondent fell short of a proper HR system and relied on diary notes and text/WhatsApp messages.
- 5.6 The Respondent's disciplinary process did not follow disciplinary procedures recommended by the Code such as fully investigating a case before giving a disciplinary warning, giving the employee a chance to be heard, giving a right to appeal.

## **6. Conclusion**

- 6.1 The question for the Tribunal to determine in this case is whether the employer acted reasonably in dismissing the employee.
- 6.2 Previous decisions of the Tribunal have adopted the standard that dismissal procedures should be objectively fair.
- 6.3 The burden of proof is on the Respondent to prove that dismissal in the circumstances was reasonable and that the process followed was fair.
- 6.4 The Tribunal took into consideration the provisions of the Code and the procedures recommended for disciplinary warnings and termination, noting that these were not followed, although accepting that best practice guidance as set out by Code is illustrative rather than binding.

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 220025)

Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).

- 6.5 The Respondent in oral evidence relied on the argument that beaching the van constituted gross misconduct giving rise to summary dismissal, but the Dismissal Letter was issued a week after the incident and referred to previous verbal warnings leading to a written warning as forming a basis for immediate dismissal under clause 10 of the Contract.
- 6.6 The Tribunal notes that clause 10 provided for time to improve after a written warning and that this was not given as the Applicant was on sick leave from the time when he received the written warning until he received the Dismissal Letter.
- 6.7 The Tribunal is not persuaded that it was reasonable for the Respondent to treat the van beaching incident as a conduct justifying summary dismissal under clause 12 of the Contract, given that the cost of the damage done to the van was in the region of £100.
- 6.8 The Tribunal also took into account the size and available resources of the Respondent and is sensitive to his position as a small business owner, but is of the view that, as he had been trading since 2016, when he decided to take on additional staff in 2022 there should have been consideration given to paying for professional HR help and increasing his HR knowledge as an employer.
- 6.9 The Tribunal concludes that the decision to dismiss Mr Taylor was unreasonable in the circumstances and the process was unfair.

## **7. Decision**

Having considered all the evidence presented whether recorded in this judgment or not, and the representations of both parties, and having due regard to all the circumstances, the Tribunal unanimously finds that under the provisions of the Law the Applicant was unfairly dismissed.

## **8. Award**

- 8.1 When calculating the award under section 22(2) of the Law, the Applicant's pay during the six months prior to the termination was agreed to be £18,720. This is the starting point for the award of compensation.
- 8.2 The Tribunal then considered what effect, if any, section 23 of the Law should have. This provision enables the Tribunal, in certain

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal's Decision (Form ET3A) are available on application to the Secretary to the Tribunal, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 220025)

Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).

circumstances, to reduce the amount of any award under section 16(1) of the Law. The circumstances that would enable the Tribunal to reduce the amount of the award are that it would be just and equitable to do so – see s.23(2). For the avoidance of doubt none of the exclusions contained in section 23 apply to this case.

8.3 The Tribunal notes that the Respondent had genuine concerns about the Applicant’s conduct and that the working relationship between the parties, at least from the employer’s perspective, seemed to have broken down. Whilst it finds the Respondent’s HR processes were inadequate, the Tribunal notes that the Respondent intended to follow a disciplinary process in dealing with his concerns, and in the Tribunal’s view it seems likely that the procedural failures giving rise to unfair dismissal did not affect the outcome that the Respondent would have dismissed the Applicant in any event. In these circumstances the Tribunal considers that it is just and equitable to reduce the award by 15% to reflect this. The award of the Tribunal is, therefore, £15,912.

8.4 The Tribunal has decided not to make any order as to costs.

.....  
Signature of the Chairperson

.....  
Date

Any Notice of an Appeal should be sent to the Secretary to the Tribunal within a period of one month beginning on the date of this written decision.

The detailed reasons for the Tribunal’s Decision (Form ET3A) are available on application to the Secretary to the Tribunal, The Secretary to the Tribunal, Edward T Wheadon House, The Truchot, St Peter Port, Guernsey, GY1 3WH.

(Telephone: 01481 220025)

Email: [Employmentrelations@gov.gg](mailto:Employmentrelations@gov.gg).