



THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL

Applicant: Mr Michael Paine
Represented by: Himself

Respondent: The States of Guernsey (acting by and through The Office of the Committee for Policy & Resources)
Represented by: Crown Advocate Emily Bamber

Tribunal: Susan Gordon Hardy (sitting alone)

Hearing date: 29 April 2024

Decision of the Tribunal

Having considered all the evidence presented, whether recorded in this judgment or not, the Tribunal finds that it has no jurisdiction to hear and determine the Applicant’s complaint and the Applicant’s claim is dismissed pursuant to section 1. (1) (a) of the Employment and Discrimination Tribunal (Guernsey) Order, 2020.

.....
Signature of the Chairperson

10.05.24
.....
Date

The legislation referred to in this document is as follows:

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

The Employment and Discrimination Tribunal (Guernsey) Order, 2020 (the “Order”)

Reasons for the decision

1. Michael Paine (the “Applicant”) filed an ET1 form with the Employment and Equal Opportunities Service (“Secretariat”) dated 19 December 2023 claiming that he was unfairly dismissed by The States of Guernsey (the “Respondent”).
2. In response, the Respondent filed an ET2 form with the Secretariat dated 24 January 2024 which argues that, because the Applicant was employed on a fixed term contract which included provisions whereby the Applicant and the Respondent agreed that Part II of the Law affording protection against unfair dismissal would be excluded, non-renewal of such contract by the Respondent could not constitute unfair dismissal under the Law.
3. The Respondent accordingly requested that the Tribunal dismiss the claim on the basis that it lacks the jurisdiction to hear and determine the Applicant’s complaint and/or on the basis that the Applicant’s claim bears no reasonable prospect of success, pursuant to section 1. (1) (a) and/or (b) of the Order.
4. Section 4 of the Order permits a Tribunal Chairman sitting alone to determine a dismissal application under section 1 of the Order. A preliminary hearing on this application was held on 29 April 2024 before Ms Susan Gordon Hardy, sitting alone. Crown Advocate Emily Bamber represented the Respondent, and the Applicant was self-represented.
5. The Tribunal was conscious that the Applicant was not 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 Applicant opportunities to ask questions or request clarification of any legal issues being discussed.
6. It was agreed that the Applicant was employed from 1 November 2021 until 6 October 2023 on successive fixed term contracts. The initial contract from 1 November 2021 to 6 May 2022 was extended for a further six months. A new fixed term contract (the “Contract”) was entered into on 6 October 2022 (and signed by the Applicant on 7 October 2022). This provided for employment for a fixed term of one year expiring on 6 October 2023.

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.

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7. Evidence was introduced by the Respondent to show that by letter dated 12 September 2023 from States of Guernsey Human Resources, the Applicant was informed that his last day of service would be 7 October 2023 (there is a slight discrepancy with the Contract which had provided for an End Date (as defined) of 6 October).
8. Internal emails between the Respondent's Human Resources team members ("HR team") and the Head of Digital of the Respondent, dated 20 September 2023, were submitted to show that Mr Paine's role was no longer required from a business perspective, so the role would not be extended and would not be advertised for replacement.
9. Copies of email exchanges dated 20 and 21 September 2023 between the HR team and the Applicant were also provided as evidence that the Respondent had consistently referred to the fixed term nature of the Contract and that the employment was terminating due to expiry of the Contract.
10. Mr Paine gave evidence that, whilst he noted the provisions of the Contract, he understood that the project he was working on was likely to extend beyond October 2023 and he had expected that his employment would be extended. He referred to an email from his line manager dated 13 September 2023 which Mr Paine believed indicated that he was being asked about his availability to work until 2025.
11. It was noted that Mr Paine had been signed off on sick leave from early August until late September 2023 and in his letter of 17 September 2023 to the HR Team had requested that this be taken into consideration in deciding whether to renew his contract or offer him an alternative role, as it would be difficult for him to apply for another job while he was unwell.
12. Whilst the Tribunal notes Mr Paine's view that he was assisting with a long-term project, it does not find any evidence to support a belief that the Contract was going to be renewed and notes that the terms of the Contract provide that whether to renew the employment at expiry of the Contract was "*entirely at the discretion of [the Respondent]*".
13. The Applicant's complaint that he was unfairly dismissed is based on section 3 of the Law which states that "In every employment to which this Part of the Law applies [*emphasis added*] every employee shall, subject to the provisions of section 15 (which specifies the qualifying period), have the right not to be unfairly dismissed by his employer".
14. The Tribunal notes that pursuant to section 5(2) (b) of the Law, failure by an employer to renew a fixed term contract could constitute dismissal under the Law. However, section 4 of the Law permits parties to agree in writing to

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exclude the protection of Part II of the Law (on unfair dismissal) from their fixed term contract.

15. The Tribunal notes in this regard the provisions of clause 2.4 of the Contract:

“For the avoidance of doubt, it is agreed and understood by the employee that (and subject to the terms of this agreement), this Fixed Term Contract of Employment will end on the End Date [defined as 6 October 2023] and that by signing this Agreement:

- a) The employee waives his /her right to bring any claim for unfair dismissal pursuant to section 4 (1) (b) of the Law if their Fixed Term Contract is not renewed; and*
- b) That on expiry of this agreement it is entirely at the discretion of the Employer whether to renew the Employee’s employment, and if so to offer employment on such amended terms as it deems appropriate; ...”*

16. It is also noted that beside the signing block in the Contract, where the Applicant signed, it is provided that:

I MICHAEL PAINE agree to the terms and conditions set out in this contract, annexed schedule and Part A of the Staff Handbook.

Further, pursuant to clause 2, I confirm that under section 4 (1) (b) of the Law I waive my right to bring a claim of unfair dismissal following any non-renewal of this fixed term contract, or any extension or variation to it.

17. It was submitted by Crown Advocate Bamber that the effect of these provisions is that the parties to the Contract lawfully disapplied Part II of the Law and Mr Paine waived his right to bring a claim of unfair dismissal following non-renewal of the Contract.

18. The Tribunal finds that the evidence supports this position and determines that to the extent that non-renewal of the Contract by the Respondent may have constituted a dismissal, it is not one that falls within the scope of the statutory protection against unfair dismissal offered by Part II of the Law.

19. The Tribunal therefore finds that it has no jurisdiction to hear and determine the Applicant’s complaint and the Applicant’s claim is dismissed pursuant to section 1. (1) (a) of the Order.

.....
Signature of the Chairperson

10.05.24

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