

Case No: ED028/23

**THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL**

**Applicant:** Miss Jane Christie

**Respondent:** The States of Guernsey (acting by & through the Policy & Resources Committee)

**Tribunal Member:** Mrs Susan Hardy (Chairperson)

**Decision Date:** 13 March 2024

**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”)

**Decision of the Tribunal:**

1. Miss Jane Christie (the “Applicant”) submitted an ET1 form with the Employment and Equal Opportunities Service (“Secretariat”) on 13 December 2023 claiming that she was unfairly dismissed by The States of Guernsey (the “Respondent”).
2. In response, the Respondent submitted an ET2 form with the Secretariat on 12 January 2024 which argues that the Applicant was not employed by the Respondent but was offered work as a bank worker, pursuant to an agreement dated 18 January 2021 which confirmed that the Applicant had been added to the Respondent’s list of Bank Staff as a residential support worker.
3. The Respondent argues that there is no employer-employee relationship between the Respondent and the Applicant, and therefore the Law, on which the Applicant relies in her claim of unfair dismissal, does not apply. The Respondent accordingly has requested that the Tribunal determine as a preliminary matter whether the Tribunal lacks the jurisdiction to hear and determine the Applicant’s complaint.

An application to have a decision reviewed must be made in writing and must set out why review of the decision is necessary within one month of the date on which the decision was sent to parties.

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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4. The Applicant's complaint that she 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 [this Part applying to unfair dismissal] 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".
5. Section 34(1) of the Law defines an employee to be "an individual who has entered into or who works under (or, where the employment has ceased, who worked under) a contract of employment". Section 34(1) defines an employer to be "in relation to an employee,...the person by whom the employee is (or, where the employment has ceased, was) employed".
6. It follows from section 3 of the Law that if an individual is not an employee of a person or entity against which a claim of unfair dismissal is brought under the Law, that individual fails to qualify to make such a claim.
7. In determining whether the Applicant is an employee of the Respondent, the Tribunal considered whether there is a contract of employment between the Applicant and the Respondent or any agreement between them which might reasonably constitute such a contract of employment. For this purpose, it has considered the correspondence made available to it between the Applicant and the Respondent concerning the Applicant's name being added to the Respondent's list of Bank Staff from 5 January 2021.
8. The Tribunal notes in the Respondent's letter to the Applicant dated 18 January 2021 confirms (1) the Applicant's application to join the Respondent's Staff Bank has been accepted, (2) payment will be at a daily rate, (3) there is no entitlement to pension, paid bank holidays, annual leave or sickness absence, and the letter states that "*As this is a Bank role you [the Applicant] will not have guaranteed hours of work and are not under any obligation to accept work offered to you*". These terms of appointment were accepted by the Applicant on 19 January 2021.
9. The Tribunal also notes that in letters to the Applicant from the Respondent dated 21 August 2023 and 29 September 2023 respectively, the Respondent made clear that the Applicant was not an employee and referred to her "bank work".
10. The Tribunal finds that the Applicant was engaged as Bank Staff by the Respondent and that this was consistently made clear to the Applicant. Such an engagement is based on no mutuality of obligation between the parties. The Respondent had no obligation to offer work to the Applicant, and the Applicant had no obligation to accept any work offered. In the absence of

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such mutuality of obligations the relationship does not constitute that of employee/employer.

11. Based on the above, the Tribunal determines that the Applicant was not employed by the Respondent and therefore is not a qualifying employee for the purposes of making a complaint against the Respondent pursuant to the Law, and that the Applicant's claim shall be dismissed pursuant to section 1. (1) (a) of the Order.

.....  
Signature of the Chairperson

13.03.24  
.....  
Date

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