

**THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL**

**Applicant:** Mr Darren Lune  
Represented by: Mr Lune represented himself

**Respondent:** The States of Guernsey (Acting by and through the Policy & Resources Committee)  
Represented by: Mr Glen Symons

**Tribunal Members:** Mrs Paula Brierley (Chair)  
Ms Alex Crosland  
Mr Andrew Vernon

**Hearing date(s):** 11 November 2022

**Decision of the Tribunal**

Having considered all the evidence presented, whether referred to in this judgment or not, the representations of both parties and with due regard to all the circumstances, the Tribunal finds that, under the provisions of The Employment Protection (Guernsey) Law, 1998, as amended, the Applicant resigned from his employment in circumstances that did not give rise to constructive dismissal. In the circumstances, the Applicant's claim is dismissed and makes no award. The Tribunal made no order for costs.

.....  
Signature of the Chair

.....  
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)

Raynard v Fox [2018] EWHC 443 (Ch)

Western Excavating (ECC) Ltd v Sharp [1978] QB 761

Spafax Ltd v Harrison [1980] IRLR 442

**Extended Reasons****1. Introduction**

- 1.1. Throughout these extended reasons documents within the hearing bundle shall be referred to like this: “[xx]”, which means “section and page number”.
- 1.2. The Applicant, Mr Darren Lune, who had been employed by States of Guernsey as an Adult Social Worker (Band 6) based at the Castel Hospital commenced employment on 5 August 2019, complains that he was constructively dismissed.
- 1.3. The Respondent denies that the Applicant was dismissed, that he tendered his resignation and that that resignations did not constitute a constructive dismissal.
- 1.4. Accordingly, the Applicant had the burden of proof that on the balance of probabilities he was entitled to terminate his employment by reason of the Respondent’s conduct.
- 1.5. The Tribunal, consisting of three members, met on Friday 11 November 2022 to hear and determine the Applicant’s complaint. All the material submitted by the parties has been taken into account by the Tribunal, whether specifically referred to in this judgement or not.
- 1.6. The Applicant represented himself at the hearing and did not call any other witnesses.
- 1.7. The Respondent, The States of Guernsey (acting by and through the Policy and Resources Committee) was represented by Mr Glen Symons, Employment and Advisory Lawyer, and called Carol Whitehouse and Lynne Duckworth as witnesses.
- 1.8. The Tribunal was conscious that the Applicant was not legally represented and was anxious to ensure that all necessary steps were taken to ensure that both parties had a fair hearing. The Tribunal took account of the Deputy Bailiff’s general comments in Cotterill v States of Guernsey (Guernsey Royal Court, Judgment 58/2017) 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. Accordingly, the Tribunal took care to explain the Tribunal's procedure to the parties throughout the proceedings and to explore potential arguments and lines of questioning that they could have advanced. The Tribunal was also mindful of the commentary in paragraph 44 of Reynard v Fox [2018] EWHC 443 (Ch) 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 a special indulgence to a litigant in person might be justified where a rule was hard to find, difficult to understand or it was ambiguous.

## **2. Background**

- 2.1. The Applicant was hired in 2019 from off island by the Respondent to work as an Adult Social Worker.
- 2.2. He commenced employment on 5 August 2019 under the terms set out in a contract dated 29 July 2019 (C6) setting out particulars and conditions of service, signed by the Applicant on 8 August 2019 and a representative of the Respondent on 29 July 2019.
- 2.3. As part of the relocation package offered by the Respondent to off island hires the Applicant was entitled to 2 years rent allowance. The directive for the detail of this allowance was referred to at page 3 of the offer of employment letter (C8) and the detail set out in the "Relocation Directive" (C18).
- 2.4. The version of the relocation directive contained in the bundle at C14 is dated April 2018. There is no reference to possible extension of the rent allowance for a further year under exceptional circumstances.
- 2.5. The Committee for Health & Social Care Agenda For Change Terms and Conditions of Service Handbook (I1), dated April 2019 at page 79 also sets out Relocation Expenses. At 33.1.3 it states that "this paper provides supplementary information in relation to application of these provisions which have been extended to nurses and other clinical staff ...." At 33.2.2 it states "In exceptional circumstances, the payment of rent allowance may be extended to a maximum of 3 years but not beyond".
- 2.6. In September 2019 the Applicant moved into his first property in Guernsey, he signed an initial 12 month contract with the landlord. At the time the landlord said it could be the Applicant's for 2 years if required.
- 2.7. March 2020 Guernsey went into lockdown due to the COVID pandemic.
- 2.8. July 2020 the Applicant's landlord told him that he would have to vacate the property at the end of the 12 month period as the property had been sold. Due to the pandemic property options were very limited.

- 2.9. The Applicant approached his line manager, Carol Whitehouse at this point to explain his difficult situation and asked the question about an extension of the rent allowance querying the clause regarding “exceptional circumstances”. The Applicant said the reason he brought it up at this stage ie only 12 months in on his contract was because he had viewed two properties but the landlords wanted a contract for 2 years. The Applicant was told by his line manager that his query would be looked into.
- 2.10. In September 2020 the Applicant managed to secure a property for a 12 month period.
- 2.11. In November 2020 the Applicant brought up the topic again with his manager and was told it would be looked into.
- 2.12. December 2020 the Applicant’s line manager queried why the Applicant had not applied for a promotion that was available, the Applicant explained that he did not want to take a role if he then had to leave if the rent allowance was not extended.
- 2.13. February 2021 the Applicant contacted HR and explained his situation. The HR contact asked the Applicant to send details of the clause he was referring to regarding “exceptional circumstances”.
- 2.14. March 2021 the Applicant approached his line manager and said that unless he got the extension to the rent allowance he would have to look for other employment as he would need to give 90 days notice. Carole Whitehouse sent an email to Lynn Duckworth (F42) explaining the situation. Lynn Duckworth replied by email dated 9 March 2021 (F44) after looking into the situation and taking it up with the wider HR community in the form of the “HR Leads” from other service areas and the Senior HR Manager with responsibility for the Relocation Directive. Lynn Duckworth’s email noted that the Applicant had already been advised that the Relocation Directive did not give scope for extensions to the rental allowance as it was paid to assist with moving but was not intended as a long term arrangement. Lynne Duckworth also noted that the Applicant’s entitlement to rent allowance did not expire until end August. Lynne Duckworth further noted that she had received a number of requests for extensions to rent allowance “recently” as had other HR colleagues in other areas and “in line with the policy, no extensions have been granted”, that “agreeing to an extension would set a precedent as many other staff could claim the same circumstances”.
- 2.15. 30 March 2021 The Applicant, having been offered a job in England, sent a letter of resignation via email to his line manager. Stating his last day of employment would be Friday 2 July 2021. (F46, F47) The Applicant said how much he had enjoyed his experience however, it was the high rent prices that meant he could not “afford to remain without support of the extension of the rent allowance.”

- 2.16. 26 April 2021 the Applicant sent an email to his line manager stating that he had received an offer for another position in England which he wanted to accept but had been advised not to hand in his resignation until all his pre-employment checks had been carried out therefore, he wanted to rescind his resignation so that he could then resubmit his resignation at a later date. The Applicant then resubmitted his resignation on 29 June 2021 (F50, F51) the letter of resignation once again reiterated how much he had enjoyed the experience, however it was the high rent prices which meant he could not afford to remain without support of the extension of the rent allowance.

### **3. Evidence Summary**

- 3.1. At the outset of the Respondent's cross examination of the Applicant, the Applicant confirmed that it was the denial of the extension to rent allowance that had caused him to resign confirming that it was only that item and no other reason.
- 3.2. The Applicant felt that he should have been awarded an extended year for rent allowance as due to the pandemic he was finding it hard to secure rented accommodation. He put forward that the pandemic was an exceptional circumstance and therefore a clause in his contract had not been honoured. The Applicant stated that at no point had it been explained to him what constituted "exceptional circumstances".
- 3.3. The Respondent argued at the hearing that the pandemic was not specific to the Applicant and therefore not exceptional on an individual basis. That the wording contained in the agenda for change document was out of date and should have been changed and that it was the document that had been received by the Applicant at the time of his offer of employment ie the correct Relocation Directive (which he accepted) which conclusively confirmed (in bold and underlined wording) that the rental allowance was applicable only for a maximum of 2 years. Thirdly, that even the out of date wording did not apply to the Applicant because his role as an Adult Social Worker did not fall into the nursing or clinical category.

### **4. Legal Framework**

- 4.1. Since the Respondent denied that the Applicant had been dismissed, it was for the Applicant to prove on the balance of probabilities, that he had terminated his contract of employment, with or without notice, in circumstances such that he was entitled to terminate it without notice by reason of the employer's conduct (see section 5(2)(c) of the 1998 Law). In order for the Applicant to be able to claim constructive dismissal, four conditions must be met:

- (1) There must be a breach of contract by the Respondent. This may be either an actual breach or an anticipatory breach.

- (2) That breach must be sufficiently important to justify the Applicant resigning, or else it must be the last in a series of incidents which justify his leaving.
- (3) The Applicant must leave in response to that breach and not for some other, unconnected reason.
- (4) The Applicant must not delay too long in terminating the contract in response to the Respondent's breach, otherwise he may be deemed to have waived the breach and agreed to vary the contract.

4.2. The Tribunal is satisfied that the concept of constructive dismissal in Guernsey law is so similar to English Law that English authorities may be used to guide the way through what can potentially be a difficult legal question.

4.3. In *Western Excavating (ECC) Ltd v Sharp* [1978] QB 761 the Court of Appeal made it clear that questions of constructive dismissal should be determined according to the terms of the contractual employment relationship and not in accordance with a test of 'reasonable conduct by the employer'. The Court of Appeal has since reaffirmed that lawful conduct is not capable of constituting a repudiation even though it may be unwise or unreasonable in industrial relations terms (see *Spafax Ltd v Harrison* [1980] IRLR 442). When deciding whether there has been a breach of contract, the Tribunal must reach its own conclusion on this question. The test is not whether a reasonable employer might have concluded that there was no breach: it is whether on the evidence adduced before it the Tribunal considers that there was.

## 5. Facts Found

5.1. The Relocation Directive (C14) dated April 2018, which states "This directive replaces all previous directives with effect from 23 April 2018", which was included with the Applicant's offer pack, clearly states at page 5 (C18) that the rent allowance was "for a maximum of a two year period". There is no reference to any possible extensions.

5.2. The Agenda for Change Terms and Conditions of Service Handbook version April 2019 (I1) which the Respondent submits contains out of date wording, does refer to an extension of rent allowance however, it states "may" be extended. This is not a guarantee.

5.3. The Agenda for Change Terms and Conditions of Service section 10 Relocation Expenses (I79) at 33.1.3 also states that the provisions in that section were for nurses and other clinical staff neither of which categories the Applicant's role fell into.

## 6. Conclusion and Decision

6.1. The Tribunal is persuaded that the Respondent was not under any contractual obligation to extend the rent allowance for a further year to the Applicant and therefore acted lawfully in denying the Applicant's request.

6.2. For the reasons set out above, the Tribunal unanimously concludes that the Applicant was not constructively dismissed. In those circumstances the Tribunal dismisses the Applicant's claim and makes no award.

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Signature of the Chair

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Date