

THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL

Applicant: Ms Sophie Gatehouse Jackson.
Represented by: Herself

Respondent: Le Friquet Hotel Limited
Represented by: Mr. James Speers

Tribunal Members:

Mr P Woodward (Chairman)
Mr Darren Etasse
Mr George Jennings

Hearing date: 1 April 2021

Decision of the Tribunal

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 finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was unfairly dismissed. In respect of this decision the Tribunal awards the Applicant £10,030.95.

Mr Peter Woodward
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Signature of the Chairman

27 April 2021
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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.

The Law referred to in this document is The Employment Protection (Guernsey) Law, 1998, as amended.

Extended Reasons

1.0 Introduction

1.1 The Applicant:- Ms Sophie Gatehouse Jackson who represented herself.

1.2 The Respondent:- Le Friquet Hotel Limited represented by Mr. James Speers.

1.3 At the outset of the hearing it was confirmed that:-

The agreed Effective Date of Termination (EDT) was 9 November 2020

The gross earnings were £10,030.95 for the six months prior to the EDT

1.4 The complaint was one of alleged unfair dismissal

1.5 The Respondent contended that the dismissal had been for reasons of gross misconduct and that it was a fair dismissal.

1.6 The “bundle” provided by the Respondent included witness statements from:-

- Mr Andrew Wright, Hotel proprietor (Doc 3)
- Mr Jimmy Wright, son of the proprietor (Doc 4)
- Mrs Stefanini Monera, Chief Receptionist (Doc 5)

2.0 Facts found

2.1 Le Friquet Hotel is a designated three-star hotel, mainly serving UK clientele; it has 37 air-conditioned rooms and offers guests a range of upmarket facilities.

2.2 The Applicant was hired in the role of Receptionist on 8 October 2019. A contract of employment was presented in the bundle (Doc 6) which was not signed by the Applicant, however the Applicant confirmed that she had seen it when appointed.

2.3 Apparently all went well in the period before the Guernsey Corona Virus Lockdown in March 2020. The Respondent confirmed in letter sent to the Applicant on 20 March 2020 that her performance in the job had been excellent. (Note the letter, Doc 8, is dated 20 February rather than 20 March 2020

however the context of the letter is in confirmation of discussions which had commenced 17 March 2020 and is clearly a typographical error.)

- 2.4 Doc 8 expressly stated that in light of unfolding events that it constituted a “temporary layoff notice”. The letter stated that the Applicant would be paid up to and including 22 March 2020 and as the Applicant was not a permanent Guernsey resident offered “live-in” accommodation and meals at no cost for at least a two-week period. The letter also gave advice as to how she might proceed in obtaining unemployment pay or have access to the “Hardship Fund” during the layoff period; Mr Speers in this letter stated as follows

“I sincerely hope that we are able to contact you in the near future to offer you your job back, but have to be honest and advise that I simply do not know when this will be. I sincerely thank you for your service at the hotel and for being a part of a fantastic team”

This letter made no mention of dismissal although the bundle included a later temporary employment contract dated 15 June 2020, (Doc 7), which the Applicant stated she had not seen or signed. She informed the Tribunal that she was completely unaware of this document until the Respondent’s “bundle” was received in preparation for this hearing in March 2021; this was not contested by the Respondent.

- 2.5 The Respondent stated that having temporarily laid off the Applicant he believed he had to issue a new contract of employment to take advantage of the States co-funding scheme. In response to questions from the Tribunal Mr Speers stated he had not consulted any competent external authority in arriving at this conclusion. On consideration he informed the Tribunal that he now fully accepted that her underlying contract of employment commencing 8 October 2019 had stayed in place until her dismissal 9 November 20; some of this period with support from the Guernsey “Hardship Fund” and the Guernsey States Payroll Co-funding scheme. He requested the Tribunal to set aside this document and give it no further consideration. The above facts confirm that the Applicant contract of employment with the Respondent was continuous for 13 months in total, thus her claim of unfair dismissal could be heard by the Tribunal.

- 2.6 As a rider the Tribunal notes that in consulting the States of Guernsey website that it announced Payroll Co-Funding in spring 2020 with the stated intent to assist employers in keeping employees on their books during a period of great uncertainty. The announcement on 24 March 2020 stated that “Employees must be permanent employees”.

2.7 The parties had agreed at a prior CMM that an “smart” phone recording of the meeting on 9 November 2020 could be entered into evidence. However during the hearing it proved impossible to display this video on 3 separate laptops. The Chairman proposed that as both the parties who attended the meeting were present that it would seem appropriate to rely on their oral evidence. This was agreed by both parties.

3.0 Ms. Sophie Gatehouse Jackson

3.1 It was the Applicant’s contention that she had been dismissed immediately and without due process.

3.2 On 7 November 2020 the Applicant was on the “morning shift”. She told the Tribunal that it was a very busy morning as the hotel had been fully booked the night before. Normal check out time was 11AM however there were still guests to check out at 11.15AM when Mrs X, an elderly guest, arrived and requested to be checked in, this in advance of 2PM, the normal earliest check-in time.

3.3 The Applicant noted that this guest had mobility problems, that the room assigned to her was on the second floor and was concerned for her as the Hotel does not have a lift. The guest was invited to take a seat whilst the Applicant adjusted the room allocations such that X could be accommodated in a ground floor room. The Applicant then liaised with housekeeping who advised her that the room was ready for check in. Given this confirmation the Applicant picked up the guest’s holdall and escorted her to the assigned ground floor room.

3.4 On entering the room the Applicant noticed the room was cold and put on the heating and showed the guest how to use the remote control. She confirmed with the guest that she was happy with the room, showed her the phone and informed Mrs. X that if anything else was required she could dial zero for assistance. The Applicant then returned to the hotel Reception. The Tribunal notes that in accompanying Mrs. X to her room this left the Reception area unmanned and given the continuing requirement to check guests out only a few minutes could be spared to assist Mrs X.

3.5 Approximately an hour later Mrs X returned to the Reception and asked if she could look at another room. On enquiring further, the Applicant established there was no problem with the room; Mrs X stated she was feeling anxious and lonely. The Applicant then informed Mrs X that the only other room available was on the 2nd floor and she might feel more isolated there. She advised Mrs X that it would be better to stay on the ground floor as she was closer to the reception and the restaurant and the bar; and further, that possibly she would not feel so alone in the company of other guests. Mrs X left the Reception area and went towards the lounge.

- 3.6 Some 30 minutes later Mr Andrew Wright and his son came to the Reception area; Mr Wright stated he “wanted a word with you in the back”, this directed to the Applicant. He stated that Mrs X in room 31 was crying her eyes out because the Applicant had been rude to her. The Applicant attempted to explain why she believed Mrs X was upset but Mr Wright told her to stop talking and said that if she “did that again” she would be “finished here”. The Applicant challenged Mr Wright telling him he was not giving her an opportunity to explain; in her words she said to Mr Wright “so you’re just going to believe her, and I’m not allowed to talk”. Upon hearing this Mr Wright reportedly stated “that’s it! Give me your keys, you’re fired!”.
- 3.7 The Applicant handed the keys to Mr Wright and went to her room. Approximately 30 minutes later she spoke with Mr Jimmy Wright thinking that his father might be approached to reconsider his decision. Mr Jimmy Wright responded by telling the Applicant it would not be a good idea as a she was so clearly upset it would not go well given her distress. In the event she did not seek to meet with Andrew Wright on that day.
- 3.8 During the evening of 7 November the Applicant encountered the evening receptionist who apparently had tried to intercede on her behalf, but to no avail. This colleague passed on a message from Mr Wright informing her she must attend a meeting on 9 November to which she responded that she might not be available as she had an urgent need find alternative accommodation. Subsequently the Applicant was informed that if she did not attend the meeting, she would find all her belongings outside the front door; this was not contested by the Respondent. In the event the Applicant did meet with Mr. Speers on 9 November who confirmed she was dismissed for “gross misconduct” and gave her a pre-prepared letter confirming this decision
- 3.9 The Tribunal notes that the Applicant was not afforded the right to have a colleague present with her at this meeting, there was no reference to the company procedures, and the dismissal letter was not included in the bundle. The Applicant was not informed of any right of appeal as to the decision to dismiss.

4.0 Mr. James Speers

- 4.1 The Respondent was questioned as to the whereabouts of the hotels Disciplinary process. There was a notable absence in the bundle of any abstract of a company handbook or a separate document describing such a process. The Tribunal inspected the contract of employment (Doc 6) and the company “Induction” briefing (Doc 18) and noted that neither document referenced such a policy. The Respondent stated that staff were aware of such a policy and had received training on it.

- 4.2 Mr Speers stated that the Applicant had received earlier warnings about her attitude at work, and offered proof of this in documents 13,14,15, 16 and 17. The Tribunal considered these in turn
- 4.3 Doc 13. Was a written warning issued 4 August 2020 in relation to the Applicant allegedly leaving the Reception area early. This warning was apparently not contested by the Applicant however the Tribunal notes that the Applicant was given no right of appeal in this document.
- 4.4 Doc 14 / 15. Doc 14 was dated 10 March 2020 but purporting to report an incident which occurred 3rd October 2020 alleging the Applicant had become confrontational with her colleague Mr. Jimmy Wright. It was alleged that the Applicant had raised her voice and had become argumentative; this was corroborated by a note (Doc15) from another hotel employee. The Tribunal notes there was no mention as to whom Doc 14 was addressed and there was an absence of any disciplinary action being taken by the Respondent in relation to this event.
- 4.5 Doc 16. A record of complimentary drinks being offered to some guests who were late for a "Tenner fest" meal and had been contacted by the Applicant. This receipt was not accompanied by any documented communication to the Applicant.
- 4.6 Doc 17. Does not mention the Applicant specifically and indeed could have been a critique of any member of the hotel staff. This letter was not accompanied by any documented communication to the Applicant.
- 4.7 Turning to the events that unfolded on 7 November 2020 Mr Andrew Wright in his witness statement expressed his concern that Mrs X, by her own account, had been treated rudely and dismissively by the Applicant. Contrary to the Applicant's evidence he stated that he had not shouted at the Applicant and it was she who had raised her voice and become confrontational. He confirmed in this witness statement that he dismissed the Applicant on the spot for gross misconduct and asked the Applicant to hand in her Hotel keys.
- 4.8 In his witness statement Mr. Andrew Wright stated that Mr Jimmy Wright had asked if he could see the Applicant that afternoon. He agreed and made himself available at 3pm however the Applicant did not show up.
- 4.9 At the subsequent meeting on 9 November Mr Speers confirmed that the Applicant had been told she was dismissed; however, she was paid to the end of November 2020 together with accrued holiday pay.

- 4.10 The Tribunal also takes note of the witness statement by Mr Jimmy Wright, (Doc 4) which directly contradicted some of the evidence proffered by the Applicant. He recollected that Mrs X had initially been turned away and told to return later for check-in. He also stated that it was at the request of Mrs X that a ground floor room was allocated to her rather than a spontaneous act by the Applicant to change the room assignment. Further that Mrs X had to carry her own luggage to her room and was then treated in a peremptory manner by the Applicant.
- 4.11 Mr Jimmy Wright corroborated the evidence from his father that the Applicant was approached calmly to discuss the issues raised by Mrs X and that she responded by losing self-control and shouting at him. The Tribunal notes that both parties agreed that the area just behind the Hotel Reception where the heated discussion took place was not sound proofed.
- 4.12 The Applicant subsequently attended a meeting with James Speers, the hotel manager on Monday 9th November. Mr Speers claimed this was the disciplinary meeting, at which he claimed he had taken the decision to dismiss her. When questioned as to when he had given the Applicant her letter of termination, he was happy to admit that he had typed the letter of termination prior to the meeting.
- 4.13 In considering the evidence presented by Mr Speers it seemed that the hotel did not adhere to any regulated and informed disciplinary process. The Respondent was asked more than once if the Hotel had followed a process to arrive at the dismissal and responded by telling the Tribunal that the dismissal for gross misconduct was the process.

5.0 Conclusions

- 5.1 Given the evidence from Mr Speers, and the assertions made in the witness statements Docs 3,4 and 5, it is reasonable to assume that from time to time the Applicant had been somewhat fractious with her work colleagues; possibly requiring some formal action by the Respondent.
- 5.2 The Tribunal does not doubt that Mrs. X expressed frustration that she had not been sufficiently listened to by the Applicant; however, it was not contested by the Respondent that the Applicant was under pressure with multiple checkouts occurring and with the Applicant as the only Receptionist. The Tribunal is persuaded that the Applicant gave as much time to Mrs X that could be afforded. It was not contested by the Respondent that by accompanying Mrs X

to her room she went beyond normal check in routines to assist this elderly and disabled guest.

5.3 It is accepted by the Tribunal that Mrs. X did tell the Applicant she was “lonely”; such a statement might imply that this guest was expecting more support than a busy receptionist could provide beyond general advice to stay in a busy area of the hotel.

5.4 Some evidence offered by the parties was in complete contradiction one to another; for example whether Mrs. X’s bag was carried by the Applicant to the room or by the guest. Also was the Applicant brusque with guest or was the guest requiring more support than could be offered with the reception area temporarily unmanned? On balance the Tribunal found the Applicant’s description of her interaction with Mrs X to be credible.

5.5 The Tribunal noted that both parties agreed that raised voices could be heard by anybody passing the reception area on 7 November 2020. The Respondent would have been well advised to select a more private area to conduct this discussion.

5.6 The Tribunal has concluded that the fundamental issue with this complaint was lack of a fair and equitable process.

5.7 In seeking to clarify these issues of process the Tribunal was guided by the Guernsey States advisory code of Disciplinary Practice and Procedures in Employment. This Code of Practice was issued under section 3I of the Employment Protection (Guernsey) Law, 1998. The effect of the failure to comply with this or a failure on the part of any person to observe any provision of the Code of Practice does not of itself render that person liable to any proceedings; but in any proceedings under this Law before a Tribunal it may offer relevant advice and may be taken into account in determining a fair and equitable judgement.

The code is expressed as follows:-

“Essential features of disciplinary procedures Disciplinary procedures should not be viewed primarily as a means of imposing sanctions. They should also be designed to emphasise and encourage improvements in an individual’s conduct.

Disciplinary procedures should:

(a) Be in writing.

(b) Be applied equally and consistently to all staff.

(c) Provide for matters to be dealt with quickly.

- (d) Indicate the disciplinary actions which may be taken.*
- (e) Specify the levels of management which have the authority to take the various forms of disciplinary action, ensuring that immediate superiors do not normally have the power to dismiss without reference to senior management.*
- (f) Provide for individuals to be informed of the complaints against them and to be given an opportunity to state their case before decisions are reached.*
- (g) Give individuals the right to be accompanied by a trade union representative or by a fellow employee of their choice.*
- (h) Ensure that, except for gross misconduct, no employees are dismissed for a first breach of discipline.*
- (i) Ensure that disciplinary action is not taken until the case has been carefully investigated. Wherever possible, the person conducting the disciplinary hearing should not also conduct the investigation.*
- (j) Ensure that individuals are given an explanation for any penalty imposed.”*

5.8 Except for the allegation that the Applicant’s conduct amounted to gross misconduct there was no evidence that any element of this code was observed.

5.9 As the Respondent’s bundle did not include any document relating to the Respondent’s disciplinary process, nor was there any reference to such a policy in the oral evidence, the Tribunal has to conclude it did not exist or, if it did, then the policy was ignored in the heat of moment. It was a dismissal which might have been justified after a thorough, balanced and documented investigation; however, this did not occur.

5.10 In addition the Respondent did not produce any policy or document relating to a potential period of suspension; it might have assisted if such a practice had been adopted by Mr Andrew Wright on the afternoon of 7 November, but it was not.

5.11 The Tribunal considered whether the meeting between the Mr Speers and the Applicant on the 9 November 2020 could have been considered as an “appeal meeting” but given the evidence from both parties it was in effect confirmation of the decision to dismiss on 7 November 2020. A pre-prepared letter was handed to the Applicant at the meeting confirming the decision to dismiss. There was no oral or written evidence from either party that any attempt was made to offer an appeal, this in the opinion of the Tribunal would have been part of a fair and equitable part of a dismissal process.

5.12 In summary, as a relatively significant employer in Guernsey, the Tribunal is disappointed that the Respondent did not take more considered steps in their disciplinary process.

6.0 Decision

6.1 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 finds that, under the provisions of the Employment Protection (Guernsey) Law, 1998 as amended, the Applicant was unfairly dismissed. In respect of this decision the Tribunal awards the Applicant £10,030.95.

Mr Peter Woodward
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Signature of the Chairman

27 April 2021
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Date