



**THE EMPLOYMENT & DISCRIMINATION TRIBUNAL**

**APPLICANT:** Mr Kevin Driscoll  
Represented by: Mr Driscoll represented himself

**RESPONDENT:** FW Rihoy & Son Limited  
Represented by: FW Rihoy & Son Limited did not attend the hearing

**Tribunal Members:** Mrs Paula Brierley (Chairman)  
Mrs Tina Le Poidevin  
Mr George Jennings

**Hearing date(s):** 3 August 2018

**Decision of the Tribunal**

Having considered all the evidence presented and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed.

When calculating the award under Section 22(2) (a) of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant’s pay during the six months prior to the termination of employment was £18,720.

An award of £18,720 is made.

Mrs Paula Brierley  
.....  
Signature of the Chairman

1 October 2018  
.....  
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, Raymond Falla House, PO Box 459, Longue Rue, St Martins, Guernsey, GY1 6AF.

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

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

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

- 1.1. In an ET1 Application form dated 1 February, 2018, the Applicant complains that he was unfairly dismissed and that it had been intimated that the dismissal was due to redundancy, however, it did not seem to apply to others, he had not received any warning or consultation, there was no selection process and no alternative employment was offered.
- 1.2. The Respondent did not submit an ET2. The only contact the Respondent made with the Secretary to the Tribunal was a telephone call on 5 April 2018 during which he stated that he did not intend to resist the complaint as he claimed his company had gone into liquidation and that he would complete the ET2 form.
- 1.3. In addition to sending correspondence, in relation to the claim and hearing, to the Respondent by post and email, the Secretary to the Tribunal also placed two hearing notifications in the Gazette Officielle. The Respondent did not attend the Hearing.
- 1.4. The Applicant represented himself and gave evidence on his own behalf; he did not call any other witnesses. The Applicant relied on a hearing bundle, marked EE1 which contained a witness statement, employment contract from FW Rihoy & Son Limited dated 31 March 2015, bank statements showing salary payments from 2015 to 2017, an asbestos survey report and a letter from the Respondent to the Applicant dated 3 November 2017. During the hearing the Applicant showed the Tribunal an email message on his mobile 'phone (EE2), to which the letter dated 3 November 2017 from the Respondent had been attached.
- 1.5. The Applicant gave evidence under oath.
- 1.6. The Tribunal met on Friday 3 August 2018 to hear and determine the Applicant's claim based on the documents and witness evidence before it. All of that material has been taken into account by the Tribunal, whether specifically referred to in this judgment or not.
- 1.7. The Tribunal was conscious that the Applicant was not legally represented during the hearing and ensured that all necessary steps were taken to provide the Applicant with 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. During the course of the

hearing, the Tribunal asked questions of the Applicant to ensure that relevant evidence was brought out.

## **2. Summary of Evidence**

### **The Applicant's Case**

- 2.1. Following an interview with Mr Quentin Hubbard for a role as a 'handyman', the Applicant was employed under a contract with FW Rihoy & Son Limited and worked across businesses which Mr Hubbard had control over. These included FW Rihoy & Son Limited, QUBE Group, Carpet Solutions, Ricochet Group, Sarnia Estate Agents, Gallery Magazine (GSY Life Magazine), Champagne Shop and other departments and newer businesses, including but not limited to, Nutrition Kitchen and Simon Says. Additionally, the Applicant, also under Mr Hubbard's instruction, worked on various properties owned by Mr Hubbard including Mr Hubbard's home.
- 2.2. The Applicant's employment contract was dated 31 March 2015 and he commenced employment as a 'Handyman' on 1 April 2015, working 40 hours per week (EE1, item 1 refers).
- 2.3. The Applicant explained that FW Rihoy & Son Limited had originally provided electrician services and had been purchased by Mr Hubbard prior to the Applicant's employment.
- 2.4. During his employment, the Applicant mainly received his instructions as to the work he was to undertake from the office that ran Mr Hubbard's businesses or from Mr Hubbard himself.
- 2.5. Whilst the Applicant was employed by FW Rihoy & Son Limited he was paid from a number of different sources as follows (EE1, item 2 refers):
  - FW Rihoy & Son Limited up to 1 July 2015 (June 2015 salary)
  - Q H up to 1 December 2015 (November 2015 salary)
  - Q Holdings (GSY) Limited up to 1 September 2016 (August 2016 salary)
  - Ricochet Ltd up to 2 October 2017 (September 2017 wages)
  - Hubbard QM on 13 November 2017 (October 2017 wages)
- 2.6. The Applicant said he was very happy working across all the departments and with all his colleagues. He explained he was called upon quite a lot by Mr Hubbard for advice in several departments to see if he could help to improve them and gave a lot of added value to the company. Examples of the Applicant's versatility were, using his catering knowledge, giving advice when asked by Mr Hubbard as to what could be done to increase a 1 star food hygiene rating at Nutrition Kitchen and also designing and building units for the Mirror Bar. The Applicant considered that these were examples of going beyond the duties of a 'Handyman'.

- 2.7. The Applicant said that, during his employment, he had filled in in various other roles including working in the Champagne Shop over a Christmas period and also doing some catering and putting up marquees for a particular event.
- 2.8. After the Applicant had been working for the company for over 18 months, he noticed that money seemed to be starting to get short and he found he was being asked to “cut corners” and do things he was not comfortable with. He gave an example of being asked to refit a gas boiler in a building that they were working on. The boiler had been taken down by a different company owned by Mr Hubbard. Mr Hubbard asked the Applicant to refit the boiler because it should not have been taken down. The Applicant told Mr Hubbard it was against the law for him (the Applicant) to fit a gas boiler as he was not a registered fitter. Mr Hubbard was unhappy that the Applicant had refused to do this work.
- 2.9. The Applicant said that a few weeks after the boiler incident, at the same property, he and some others had been told by one of Mr Hubbard’s main managers not to go into the building as it was full of dangerous asbestos. The Applicant and one of the FW Rihoy & Son Limited’s electricians approached Mr Hubbard and asked about the asbestos. Mr Hubbard said there was no dangerous asbestos in the property, they should stop listening to rumours and that he would bring in the asbestos report the next day.
- 2.10. Despite being asked for the report on a daily basis, Mr Hubbard did not let the Applicant have sight of the report. Mr Hubbard continued to tell the Applicant that it was fine. The Applicant told Mr Hubbard that no one should be in the property without the report being seen.
- 2.11. The following day, Mr Hubbard told the Applicant to go and work on Mr Hubbard’s house. Whilst the Applicant was working at his house he told Mr Hubbard that he needed to see the report because there were still men working in the building. The Applicant told Mr Hubbard that if he did not show him the report he would speak to the appropriate authorities as he was concerned about the workers’ health.
- 2.12. A few months later, the authorities closed down the site.
- 2.13. The Applicant did eventually see the report through another member of the team after he had left the Respondent’s employ. (EE1 item 3 refers).
- 2.14. The Applicant noticed around the beginning of November 2017 that his October salary had not been paid.
- 2.15. On 6 November 2017, the Applicant received a letter (EE1, item 4 refers), unsigned, from Mr Hubbard. The letter was sent as a soft copy to the Applicant by the Associate Commercial Director of Ricochet Ltd stating “Hi Kevin, please see attached letter from Quentin [Mr Hubbard], thanks”.
- 2.16. The letter stated that the company had “ceased trading on 2<sup>nd</sup> November”. The letter further stated that it aimed to ensure that “every employee is paid and to

that end a proposal to fully pay last month's wages will be made on Monday to you". The letter ended by stating "I look forward to talking on Monday and addressing future plans and full payment options to you".

- 2.17. The Applicant met with Mr Hubbard on 6 November 2017 to see how he was going to be paid and Mr Hubbard said that he could either pay the Applicant his October wages from his own account or the Applicant could keep the van he had been using but he would need to sign to say this was in full and final settlement of any claims he had.
- 2.18. During the meeting on 6 November 2017 when the Applicant said he was not happy about not receiving his wages, Mr Hubbard told him he could go to a lawyer but would not get anywhere and would not end up with a penny as FW Rihoy & Son Limited had been placed into liquidation as a result of unpaid Income Tax of over £20,000. Mr Hubbard also commented that he did not owe the Applicant a penny as it was the company that did and they had no money.
- 2.19. The Applicant raised other options for employment with Mr Hubbard but was told there were no vacancies. It is the Applicant's belief that, at the time, the maintenance division of First Class Cleaning (also within Mr Hubbard's control) were short of staff.
- 2.20. The Applicant asked Mr Hubbard about the other FW Rihoy & Son Limited's employees and was told that he (Mr Hubbard) was going to employ them himself so that they could continue to work on his house.
- 2.21. During the meeting of 6 November 2017, Mr Hubbard told the Applicant that, "it wasn't personal but business".
- 2.22. The Applicant said that during the meeting on 6 November 2017 he asked about other vacancies in the 'handyman service' within one of the other companies under Mr Hubbard's control, which he knew was short staffed, but Mr Hubbard said there were no vacancies.
- 2.23. The Applicant considered that his dismissal was unfair, the suggestion was that the dismissal was down to redundancy, however, the Applicant felt this did not seem to apply to the others employed by the Respondent. He said that he received no warning and no consultation, there was no selection process and he only received one letter. He was not offered alternative employment as other employees seemed to have been.
- 2.24. The Applicant finally received his October wages (net) from Mr Hubbard's personal account on 13 November 2017. The Applicant said that neither his Social Security nor Tax had been paid. Additionally, there was no payment in lieu of notice or holiday pay.
- 2.25. The Applicant believed that Mr Hubbard felt he knew too much about Mr Hubbard's shortcomings and shortcuts and that Mr Hubbard knew that the Applicant was prepared to speak out – especially when he felt that safety was

ignored, which is one of the reasons he believes he lost his job when others kept theirs.

### **3. The Law**

- 3.1. According to the Employment Protection (Guernsey) Law, 1998, as amended, Section 5(2) of the Law states that an employee shall be treated as dismissed by his employer if “the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice.”
- 3.2. In determining whether the dismissal of an employee was fair or unfair, Section 6(1) of the Law states that “it shall be for the employer to show a) what was the reason (or, if there was more than one, the principal reason) for the dismissal; and b) “that it was a reason falling within subsection (2) and Section 6(2) states “For the purposes of subsection (1)(b), a reason falling within this subsection is a reason which.....(c) was that the employee was redundant.”
- 3.3. Section 6(3) of the Law states “Where the employer has fulfilled the requirements of subsection (1), then, subject to the provisions of Sections 8 to 14 and (15L), the determination of the question whether the dismissal was fair or unfair, having regard for 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 substantial merits of the case.”
- 3.4. Section 11 (1) “The dismissal of an employee by an employer shall be regarded for the purposes of this Part of this Law as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee –
  - (c) being an employee at a place where –
    - (i) there was no such representative or safety committee,  
  
Brought to his employer’s attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety.”
- 3.5. Section 34(2) of the Law notes that “For the purposes of this Law any two employers are to be treated as “associated” if –
  - (a) One is a company of which the other (directly or indirectly) has control,  
or
  - (b) Both are companies of which a third person (directly or indirectly) has control

And the expression “associated employer” shall be construed accordingly.”

3.6. Section 34(3) of the Law notes that “an employee who is dismissed shall be taken to be dismissed by reason of “redundancy” if the dismissal is attributable wholly or mainly to-

(a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was so employed have ceased or diminished or are expected to cease or diminish.”

#### **4. Conclusion**

4.1. The burden of proof lies with the Respondent to demonstrate to the Tribunal that the dismissal was for a fair reason and that it acted reasonably in treating it as a sufficient reason for dismissing the employee.

4.2. Although the Respondent did not submit an ET2 nor did it attend the hearing, the only piece of factual evidence to support the suggestion that the dismissal was for the reason of redundancy was the letter of 3 November 2017 stating that the company had ceased trading on 2 November 2017.

4.3. The Tribunal took into account the size of the Respondent organisation and the States of Guernsey Code of Practice on Handling Redundancy, at Section 10 setting out the basic principles of a fair procedures for “Smaller Firms”.

4.4. The Tribunal saw no evidence to suggest that the principles of a fair procedure had been applied to the Applicant’s situation by the Respondent. There had been no consultation before a final decision had been reached, no fair and objective basis for redundancy selection and no offer of alternative employment in any associated company under Mr Hubbard’s control, even though it appears that offers of alternative employment had been made to other employees.

4.5. The Tribunal found the witness testimony put forward by the Applicant to be highly credible and is persuaded that the principle reason for him being selected for redundancy and not offered alternative employment was due to the Applicant raising concerns of a health and safety nature.

#### **5. Decision**

5.1. Having considered all the evidence presented and having due regard to all the circumstances, the Tribunal found that, under the provisions of the Employment

Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed.

**6. Award**

- 6.1. When calculating the award under Section 22(2) (a) of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant's pay during the six months prior to the termination of employment was £18,720.
- 6.2. An award of £18,720 is made.

Mrs Paula Brierley  
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Signature of the Chairman

1 October 2018  
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Date