



**THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL**

**Applicant:** Mr Emanuel Ribeiro  
Represented by: Advocate Andrew Ayres

**Respondent:** Sonnic Cleaning Guernsey Limited  
Represented by: Mr Duarte Fernandes

**Tribunal Members:** Ms Georgette Scott (Chair)  
Mrs Joanne de Garis  
Mr Andrew Vernon

**Hearing date(s):** Thursday 20 October 2016

**Decision of the Tribunal**

The Applicant, Mr Emanuel Fernandes, claimed that he had been unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended, as he had been dismissed without due process and had in addition been denied an appeal. The Respondent contested these claims.

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 found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed.

The Tribunal makes an award of £12,376.90.

Ms Georgette Scott  
.....  
Signature of the Chairman

14 December 2016  
.....  
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****1.0 Introduction**

- 1.1 The Applicant, Mr Emanuel Fernandes Ribeiro, claimed that he had been unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended, as his employer had failed to follow a fair process in relation to his dismissal.
- 1.2 The Respondent, Sonnic Cleaning Guernsey Limited, contested the claim on the basis that Mr Ribeiro had failed to carry out his duties to a satisfactory standard and had been dismissed for gross misconduct.
- 1.3 The Applicant gave both oral and written evidence and was represented by Advocate Andrew Ayres and supported by an interpreter, Mrs G Møuger.
- 1.4 A bundle of documents marked EE1 was submitted in evidence by the Applicant.
- 1.5 The Respondent was represented by Mr Duarte Fernandes, Managing Director of Sonnic Cleaning Guernsey Limited.
- 1.6 The Respondent called the following witnesses who gave both oral and written evidence:  
  
Mr Duarte Fernandes  
Ms Rachel Horsepool
- 1.7 Bundles of documents marked ER1, ER2 and ER3 were submitted in evidence by the Respondent.

**2.0 Facts Found**

- 2.1 The Respondent is a cleaning services company to both business and domestic clients.
- 2.2 The Applicant had an unsigned employment contract with Arrowsmith Marlowe Complete Facilities Limited and had refused to sign a contract with the new company Sonnic Cleaning Solutions Guernsey Limited.
- 2.3 The Applicant had been employed by the Respondent with continuous service through the changing company ownership and company names from 19 April 2012 until 8 April 2016.

- 2.4 The Applicant's duties and responsibilities were to clean both domestic and business premises as a full time employee.
- 2.5 The Respondent had provided the Applicant with a new contract of employment in March 2016 that the Applicant had refused to sign, as it did not refer to his continuity of service with the previous company.
- 2.6 The Respondent's policy in respect of discipline procedure is referred to in the unsigned Sonnic Cleaning Services contract of employment as being available in the Company Staff Handbook.
- 2.7 An Arrowsmith Complete Facilities (ACF) Staff Handbook dated 1 June 2012 provided to the Applicant also provides a similar but not identical disciplinary procedure.
- 2.8 In 2016 the Respondent employed four management staff and six full time and 60 part- time cleaning staff.
- 2.9 On 14 March the Applicant was telephoned at around 2.30 pm and asked to call at the Company premises in Rouge Rue.
- 2.10 On arrival at the offices he was directed to attend a meeting with Ms Rachel Horsepool, Operations Manager and Mr Steve Forrest, Business Development Manager.
- 2.11 At the meeting the Applicant was accused of numerous issues of misconduct and, after exchanges, which vary according to the parties, the Applicant was told he was being dismissed and to return to the offices at 4.00 pm to collect a letter confirming his dismissal.
- 2.12 The Applicant collected his dismissal letter from the Respondent as instructed. The letter attests he was dismissed *"for various issues regarding conduct and performance....including breach of confidentiality, poor attitude, timesheet discrepancies, general conduct to other staff and customers, including slanderous comments regarding the company and management."*
- 2.13 The letter also advised that the Applicant would be expected to work his notice.
- 2.14 The letter confirms that the Applicant was entitled to appeal against the decision to dismiss.
- 2.15 The Applicant wrote a letter of appeal dated 16 March 2016 setting out his concerns.
- 2.16 The Respondent disputes the date of the letter of appeal.

### **3.0 The Law**

- 3.1 In determining whether the dismissal of an employee was fair or unfair, Section 6(1) of the Law notes 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) notes “For the purposes of subsection (1)(b), a reason falling within this subsection is a reason which ... (b) related to the conduct of the employee”.
- 3.2 Section 6(3) of the Law notes “Where the employer has fulfilled the requirements of subsection (1), then, subject to the provisions of Sections 8 to 14 (and 15I), the determination of the question whether the dismissal was fair or unfair, having regard to 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 the substantial merits of the case.”
- 3.3 According to the Employment Protection (Guernsey) Law, 1998, as amended, Section 5(2) of the Law notes 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”.

### **4.0 Summary of Parties main submissions**

#### *Applicant*

- 4.1 The Applicant claimed that he was unfairly dismissed as:
- He was given no advance warning of the meeting on 14 March 2016. He was telephoned at around 2.30 pm and asked to attend the offices as soon as possible.
  - In addition, he was not told what the meeting was to be about, nor that a potential consequence of the meeting was that he would be disciplined or, indeed, dismissed.
  - The Applicant was also not told that he could bring a colleague or a trade union representative with him.
  - On arrival at the offices at about 2.45 pm he was directed to an office with Ms Rachel Horsepool and Mr Steve Forrest.

- Ms Horsepool advised the Applicant that it had been reported that he had been talking negatively about the Company to other employees and that she could dismiss him for this. Ms Horsepool told the Applicant that she would have a letter available for him to collect that afternoon at 4.00 pm and that he should return to collect it.
- The Applicant asked to hear from the complainant so that he could hear for himself what had been said.
- The only thing the Applicant could recall that might be relevant to the allegations being made, related to letters employees had asked him about, on tax coding notices for Sonnic Cleaning instead of Arrowsmith.
- The Applicant claimed he was flustered and intimidated by the questions as, although his spoken English is adequate, with two people speaking at the same time he found it hard to understand what was being said.
- The Applicant left the meeting and duly returned at 4.00 pm to collect the aforementioned letter. The Applicant said he was shocked to realise it was a dismissal letter and that it listed matters that he did not even recall being mentioned at the meeting. In addition, the letter required him to serve one month's notice, rather than being a summary dismissal letter.
- On advice from the Employment Relations Service the Applicant wrote to the Respondent asking for an appeal meeting. He hand delivered the letter on 17 March 2016. No response was ever made to the letter.
- In the appeal request letter the Applicant also asked for a copy of any notes of the meeting where he was dismissed, these were never supplied and had to be summonsed by the Tribunal. The notes formed part of an email sent by Mr Forrest and were not made contemporaneously.

4.2 In reference to the allegations made by the Respondent in the Applicant's dismissal letter the Applicant made the following responses:

- Breach of confidentiality – the Applicant was not aware of any breach and was not clear whether this was related to a client or the Company. Over the years he was with the Company he had been entrusted with many keys and codes and been responsible for securing offices, homes, shops and public houses. Often he would be the only person on site.
- Poor attitude – the Applicant said that he felt his attitude was good as he worked seven days a week often starting very early in the morning. He had also accepted the numerous operational and management changes the Company had introduced.

- Timesheet discrepancies – the Applicant explained that he drove three different vehicles including a rubbish collection vehicle, a reach and wash van and a van for general cleaning. Often he would park the vehicle in one place and move on foot to different cleaning jobs, which would upset the GPS logging system the Company installed. This would mean that on occasion his timesheets did not correspond to the GPS tracking log. He denied that he had tampered with the GPS tracking system claiming they could, and did, malfunction.
- General conduct to colleagues and customers – the Applicant claimed he conducted himself well in relation to customers, whom, he pointed out, would not have him back if his conduct was poor. He added that large cleaning jobs often required working alongside other cleaning operatives and in many cases he would, given his long service, take on the role of foreman to ensure the correct standard was achieved in the time allowed.
- The Applicant stated that he had been with the Company many years and the reason he stayed was that he enjoyed the work, which was varied and interesting, so much so that he didn't mind the occasionally unpleasant tasks.

#### *Respondent*

4.3 The Respondent claimed that the Applicant's dismissal was fair as:

- The Applicant had a long history of conduct and performance issues that the Respondent had spoken to him about on many previous occasions.
- Ms Horsepool referenced a number of issues the Company had with the Applicant which were not mentioned in the letter of dismissal:
  - Aggressive behaviour – this included shouting and swearing at members of staff, including herself.
  - Theft – this related to items taken from another employee's van. The items were found in the Applicant's van.
  - Dishonesty and damage – this relates to inaccurately recording his time in relation to the GPS tracking of his vehicles and breaking a client's toilet seat. Ms Horsepool claimed the Applicant had not admitted breaking the toilet seat.
  - Drugs – it was claimed that the Applicant admitted openly smoking cannabis. He was told by Ms Horsepool that this was unacceptable, not to mention illegal and not to bring drugs to any site or work premises.

4.4 When questioned on the above matters Ms Horsepool advised that none had been formally investigated; the Applicant had not been suspended on any occasion; the police had not been called to investigate the more serious

matters; and no notes of the meetings where the Applicant had been spoken with were available.

- 4.5 It was noted that the Company's IT system had collapsed some months previously and the only recorded written warning the Company could produce related to the Applicant was one from 2014. This had been retrieved because it was attached to an email. Ms Horsepool claimed there had been previous written warnings but none in the previous six months. It was also noted that no paper personnel files were maintained.
- 4.6 Ms Horsepool admitted in her statement and in cross examination that the meeting on 14 March 2016 had not been intended as a disciplinary meeting but another meeting where she and Mr Forrest intended to talk to the Applicant about a series of issues they had with his conduct. The Applicant's behaviour at the meeting became agitated and they resolved to dismiss him *"we decided to build a case for Gross Misconduct, we had grounds for immediate dismissal, however we gave his 4 weeks' notice in accordance with his ...contract to enable him to find other work..."*.
- 4.7 Ms Horsepool admitted that no reference was made in the dismissal letter to the Applicant's conduct at the disciplinary hearing even though she felt they were justified in dismissing him with regard to his conduct at the meeting. She further agreed that although they had not discussed everything listed in the dismissal letter as issues relating to his dismissal, at the meeting on 14 March 2016, these had been discussed with the Applicant on previous occasions.
- 4.8 In relation to the Applicant's letter of appeal Ms Horsepool said she recalled the Company receiving it but that it was handled by Mr Forrest, who had subsequently left the Company. She was not aware of why it was not responded to.
- 4.9 In testimony Mr Fernandes, the Managing Director, stated that the appeal letter was not received until the bundles for the Tribunal were exchanged and was therefore out of time.

## **5.0 Conclusion**

- 5.1 The Respondent took an unorthodox and casual approach to its own disciplinary policy and procedure. The policy and procedure itself was more than adequate for its needs and provided the correct framework for any disciplinary matters it might have had to deal with.
- 5.3 The failings in relation to the Respondent's own disciplinary procedure were not minor, but substantial:

- Failure to advise the Applicant in advance of the disciplinary meeting of the nature of the meeting, or the possible consequence;
- Failure to offer the support of a workplace colleague or trade union representative;
- Failure to provide documentary evidence or data during the meeting to substantiate the Respondent's case;
- Failure to produce notes of the disciplinary meeting;
- Failure to respond to the Applicant's letter of appeal.

5.4 The Respondent, unusually, asked the Applicant to collect his own letter of dismissal and, although they refer to the dismissal as gross misconduct and reference a wide array of alleged conduct and performance matters, they required the Applicant to serve a month's notice.

5.5 The Tribunal preferred the evidence of the Applicant in relation to the appeal letter since the Respondent's own witnesses could not agree whether it had been received or not.

5.6 Although the Respondent felt it had a good case of alleged issues with the Applicant, it failed to address these in a formalized process or to historically document them adequately. Following the loss of its IT records a reasonable employer may have considered keeping hard copies of documents which would have enabled it to produce evidence to show that it had approached each matter in line with the procedure, whilst at the same time recognizing the rights of the Applicant to be fairly heard and represented.

## 6.0 Decision

6.1 The Applicant, Mr Emanuel Fernandes, claimed that he had been unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended, as he had been dismissed without due process and had in addition been denied an appeal. The Respondent contested these claims.

6.2 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 found that, under the provisions of the Employment Protection (Guernsey) Law, 1998, as amended, the Applicant was unfairly dismissed.

6.3 The Tribunal makes an award of £12,376.90.

Ms Georgette Scott

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Signature of the Chairman

14 December 2016

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Date