

States of Guernsey



EMPLOYMENT & DISCRIMINATION TRIBUNAL

APPLICANT: Mr Giles Newark
RESPONDENT 1: VTSI Limited
RESPONDENT 2: Global Jet Luxembourg SA

Pre Hearing Review held: Monday 7 March 2016

Tribunal Members: Mrs Tina Le Poidevin (Chairman)
Mrs Joanne de Garis
Mr George Jennings

Decision of the Tribunal

The Applicant claimed that he had been unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended, which was contested by both Respondents.

As issues of eligibility in terms of jurisdiction and continuous service together with the identity of the employer at the date of dismissal were in dispute, a Pre Hearing Review was held by the Tribunal to determine whether or not the claim could be referred to Tribunal hearing.

The Tribunal, having considered all the evidence presented, whether recorded in this judgment or not, found that the Applicant was not eligible to claim unfair dismissal under the provisions of Section 4(1)(a) of The Employment Protection (Guernsey) Law, 1998, as amended, as he ordinarily worked outside of Guernsey.

As the claim was found to be outside the Tribunal's jurisdiction, the other disputed issues were not considered and the Tribunal determined that it was unable to hear the complaint.

Mrs Tina Le Poidevin	18 March 2016
.....
Signature of the Chairperson	Date

**NOTE: Any award made by a Tribunal may be liable to Income Tax
Any costs relating to the recovery of this award are to be borne by the Employer**

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 are available on application to the Secretary to the Tribunal, Commerce and Employment, Raymond Falla House, PO Box 459, Longue Rue, St Martin's, Guernsey, GY1 6AF

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

Extended Reasons

1. Introduction

- 1.1. The Applicant, Mr Giles Newark, claimed that he had been unfairly dismissed within the meaning of the Employment Protection (Guernsey) Law, 1998, as amended, on the basis that the reason given for his dismissal by Respondent 1, VTSI Limited, (i.e. the Applicant's secondment with Respondent 2, Global Jet Luxembourg SA, had completed ahead of schedule) was not the true reason for his dismissal and that Respondent 1, VTSI Limited, failed to follow any, or any fair, procedure in relation to his dismissal.
- 1.2. The Applicant provided an alternative to his claim against VTSI Limited by averring that there was an implied contract of employment between him and Respondent 2, Global Jet Luxembourg SA, on the basis that Global Jet Luxembourg SA managed and controlled the Applicant and there was a mutuality of obligations between them.
- 1.3. Respondent 1, VTSI Limited, confirmed that the Applicant was its employee and contested the claim, noting that the reason for dismissal was in accordance with Section 6(2)(e) of the Law, i.e. there was 'some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.'
- 1.4. Respondent 2, Global Jet Luxembourg SA, contested the alternative claim, noting that the Applicant was dismissed but he was not dismissed by Global Jet Luxembourg SA.
- 1.5. Pre-action correspondence from VTSI Limited alleged that the Applicant did not have the requisite qualifying period of employment in order to bring a claim, which was contested by the Applicant on the basis of his belief that there was a transfer of the business or undertaking from his previous employment relationship with TFSI Limited to VTSI Limited.
- 1.6. Pre-action correspondence from VTSI Limited also alleged that the right not to be unfairly dismissed under Section 3 of the Law did not apply to the Applicant as, pursuant to Section 4(1)(a) of the Law, under his contract of employment the Applicant ordinarily worked outside Guernsey. This was contested by the Applicant on the basis that:
 - Both TFSI Limited and VTSI Limited were incorporated in Guernsey
 - He lived and was based in Guernsey throughout his employment
 - His travel from Guernsey to the aircraft was paid for by TFSI Limited and then VTSI Limited
 - His duties commenced upon leaving his base in Guernsey so that he was on duty when he travelled

- His contracts of employment with TFSI Limited and VTSI Limited both provided that Guernsey Law applied and that the Guernsey Courts had exclusive jurisdiction in relation to any disputes
- 1.7. The Applicant was represented by Advocate Simon Geall; Advocate Geall submitted two separate document bundles in evidence.
 - 1.8. Respondent 1: VTSI Limited was represented by Ms Rachel Richardson, who submitted one bundle of documents. Respondent 2: Global Jet Luxembourg SA was represented by Advocate Jessica Roland who also submitted one document bundle.
 - 1.9. The Tribunal decided to firstly explore the jurisdictional issue noted in 1.6 above.

2. Background Information

- 2.1 The Applicant was resident in Guernsey and paid tax and social security contributions in Guernsey.
- 2.2 The Applicant was a salaried employee, paid on a monthly basis in arrears.
- 2.3 Both TFSI Limited and VTSI Limited were incorporated in Guernsey and Global Jet Luxembourg SA was registered in Luxembourg.
- 2.4 The Applicant's job purpose within a Service Agreement with Global Jet Luxembourg SA dated 26 November 2007, is noted as 'CAPTAIN on Bombardier Global Express G5000 registered OE-IMA ...'. The job description clause within that contract notes him as being 'in charge of piloting the aircraft and transporting the passenger(s) appointed by the company to the destination ...' The place of work is noted as '... the place where the duties will have to be performed ...' Luxembourg Law and the Luxembourg Labour Code are noted as being applicable in this relationship.
- 2.5 The Applicant's purpose in employment contracts with both TFSI Limited dated 11 August 2012 and VTSI Limited dated 1 November 2014 note the Applicant's position as 'Captain on LXGXX Aircraft'. The Place of Secondment was defined as 'Worldwide'. The Jurisdiction and Governing Law notes both Agreements as being subject to the laws in force in the island of Guernsey, with the Royal Court of Guernsey having exclusive jurisdiction to hear any disputes arising between the parties. Both contracts noted that 'income tax or any other taxation personal to the Employee levied by fiscal authorities wherever situated shall be borne exclusively by the Employee'.
- 2.6 The Tribunal was satisfied, after detailed examination of the contract documents, that there was consistency in that the Applicant's work was that of Captain of a specified aircraft.
- 2.7 Global Jet Luxembourg SA paid for travel and accommodation costs incurred by the Applicant to and from his place of residence to the place of secondment.
- 2.8 It was noted in the statement made by Sandra Delle Monache, Human Resources Manager of Global Jet Luxembourg SA, that the Applicant was generally expected to work a roster that involved 20 days on and 10 days off, depending on the needs of

the owner at the relevant time. Depending upon its flight schedule, the aircraft would be located at various places around the world, so Global Jet Luxembourg SA organised the travel arrangements for all crew members and that was the only connection with Guernsey.

- 2.9 The Applicant considered that he was 'on duty' at the point of reporting to Guernsey airport and commuted wearing or carrying his 'Global Jet' uniform. However, Sandra Delle Monache noted that the Applicant was not required or expected to travel in his uniform, nor was he considered to be on duty or working for Global Jet Luxembourg SA whilst he was travelling to and/or from his home in Guernsey.
- 2.10 The term 'on duty' was not defined in any of the contractual documentation included in the parties' bundles. However, Sandra Delle Monache explained the concept of 'duty' in the aircraft industry in that 'duty hours' under civil aviation regulations were relevant to determine rest periods. Those duty hours included travel time to and from an individual's home but this was not the same as the individual actually being on duty. The Applicant was expected to report for duty shortly before the aircraft was ready to leave and was free to do as he pleased until that time.

3. The Law

- 3.1 Section 4(1) of the Law notes:

'This Part of this Law applies to every employment other than:-

(a) Employment where under his contract of employment the employee ordinarily works outside Guernsey, ...'

4. Conclusion

- 4.1 The Applicant's 'base' in residential and contractual terms may have been in Guernsey, however, the eligibility to claim unfair dismissal is clearly defined in the Law as only being available to those who ordinarily work in Guernsey.
- 4.2 The Applicant may have chosen to travel wearing or carrying his 'Global Jet' uniform but Sandra Delle Monache clearly stated that he was not required or expected to travel in his uniform. Sandra Delle Monache's explanation of the aircraft industry concept of 'duty' was also very plausible.
- 4.3 The Tribunal considered the 'base test' and relevant case law, noting that the Applicant's base was only one factor and that the key term in determining the Applicant's eligibility or otherwise was that of his 'work'.
- 4.4 In the case of '*Burford v Flybe*' the Applicant reported for duty and commenced working from Guernsey Airport. The Applicant's work also ended in Guernsey. It was, therefore, correctly determined that the Applicant's claim in that case was eligible under the Law.
- 4.5 In the case of this Applicant, he travelled from Guernsey to the place of secondment, he undertook his work as Captain of an aircraft before returning to a port outside

Guernsey and only then did he travel back to Guernsey. His work, therefore, began and ended outside Guernsey.

- 4.6 The period of travel from the Applicant's place of residence to the place of secondment enabled him to commence work from the relevant port, with such travel time being taken into account merely to ensure compliance with aeronautical requirements. Whilst Global Jet Luxembourg SA paid for the Applicant's associated travel and accommodation costs, the Tribunal concluded that this did not constitute 'work' but rather the Applicant's 'work' was that of captaining/piloting the specified aircraft and that 'work' was carried out wholly outside Guernsey.

5. Decision

- 5.1 The Tribunal, having considered all the evidence presented, whether recorded in this judgment or not, found that the Applicant was not eligible to claim unfair dismissal by virtue of the provisions of Section 4(1)(a) of the Employment Protection (Guernsey) Law, 1998, as amended, as he ordinarily worked outside of Guernsey.
- 5.2 As the claim was found to be outside the Tribunal's jurisdiction, the other disputed issues were not considered and the Tribunal determined that it was unable to hear the complaint.

Mrs Tina Le Poidevin
.....

18 March 2016
.....

Signature of the Chairman

Date