



THE EMPLOYMENT AND DISCRIMINATION TRIBUNAL

APPLICANT: Mr Damien Jones
Represented by: Ms Rachel Richardson

RESPONDENT: H2O Liquid Engineering Limited
Represented by: Mr Ralph Anthony

Tribunal Members: Mr Peter Woodward (Chairman)
Mrs Paula Brierley
Mrs Joanne de Garis

Hearing date(s): Friday 24 June 2016

Decision of the Tribunal

The Applicant alleged unfair dismissal by the Respondent, H2O Liquid Engineering Limited; the Respondent asserted that the Applicant had been subject to a fair and reasonable dismissal.

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 not unfairly dismissed. The Tribunal therefore makes no award.

Mr Peter Woodward
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Signature of the Chairman

1 August 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 Damien Jones, alleged unfair dismissal by the Respondent H2O Liquid Engineering Limited and was represented by Ms Rachel Richardson.
- 1.2 The Respondent, represented by Mr Ralph Anthony, asserted that the Applicant had been subject to a fair and reasonable dismissal.
- 1.3 The parties submitted a joint bundle of documents, (marked EE1). The Applicant subsequently provided two further documents in the course of the hearing (marked EE2 and EE3).
- 1.4 Both parties agreed that the Applicant had been in receipt of gross earnings for the 26 weeks prior to the Effective Date of Termination of employment of £8,658.00.

2.0 Facts Found

- 2.1 The Respondent provides a range of plumbing services and is managed by Mr John Niles. At the time of dismissal the Company employed Mr Jason Niles and Mr Damien Jones.
- 2.2 The Applicant commenced employment with the Respondent on 15 July 2013 on a temporary basis and was then confirmed in a permanent position as an apprentice plumber on 1 September 2014 (EE1 Tabs 1, 2 and 3 refer). The Applicant was also issued with a document entitled 'Conditions of Employment' (EE1 Tab 4 refers). The Tribunal noted that there was no requirement in these contracts for Mr Jones to have a vehicle driving licence. However, in February 2015 the Company purchased a small van to enable the Applicant to attend customer sites independently.
- 2.3 The Applicant was paid to attend the College of Further Education for his formal studies working toward the completion of his apprenticeship.
- 2.4 The Applicant received an oral warning on 3 December 2014 relating to unauthorised/excessive use of his mobile phone while attending college classes (EE1 Tab 5 refers). This warning was issued by Mr John Niles.
- 2.5 On 9 September 2015 Mr Jones attended the Magistrates Court in relation to a speeding offence outside of his work hours. He received a fine of £250.00 and a driving ban of two months.

- 2.6 The Applicant received a 'first official warning' on 18 September 2015. It stated:

"It has been necessary to raise this letter as a result of your suspension from driving for two months following your recent conviction for speeding.

The loss of your licence reduces the viability of your employment as you are now dependant on other staff members to take you to and from jobs.

A further repeat of this offence or any other impacts on your ability to carry out your contracted duties will mean the Management may have to review your position with the company." (EE1 Tab 6 refers).

- 2.7 On 18 December 2015 the Applicant attended the Magistrate's Court for a second speeding offence and his licence was suspended for a further two months.
- 2.8 The Applicant was on his Christmas break between 18 December 2015 and 4 January 2016 and was not required to work in that period.
- 2.9 The Applicant and Mr Jason Niles spoke on the telephone on 26 December 2015; during this call the Applicant informed Mr Niles of the speeding offence.
- 2.10 On 4 January 2016 the Applicant returned to work and met with both Mr John Niles and Mr Jason Niles. He was given a final written warning dated 30 December 2015. It read as follows:

"This letter is a final official warning about conduct.

It has been necessary to raise this letter as a result of your second arrest or conviction for speeding.

The loss of your licence will mean the Company would review your position and would probably result in the termination of your contract with the Company." (EE1 Tab 7 refers).

- 2.11 On 13 January 2016 the Applicant attended Court and received a two-month driving ban and a £250.00 fine.
- 2.12 On 14 January the Applicant was dismissed. He was issued with a letter of dismissal, dated 15 January, which stated the following:

"This letter terminates your employment with the company with effect from 15th January 2016.

This action has been taken after a second conviction for speeding and subsequent suspension.

We refer you to our formal Warning letter dated 18th September 2015 and the Final Warning letter dated 30th December 2015 in which we clearly stated that a repeat of a similar conviction would necessitate a review of your position within the Company.

We have looked at ways to retain you for the duration of the suspension but feel that with the workload we have and the need to have to lose time taking you to and from jobs and suppliers and the fact that we do not have a base that could have used your time as a store-man we are left with no alternative but to release you from your contract.

We will pay you one weeks pay in lieu of notice and be happy to give you a reference should you wish to continue your plumbing career.” (EE1 Tab 8 refers).

2.13 The Tribunal noted that the Applicant was not offered any appeal following the decision to dismiss.

3.0 Mr Jason Niles

3.1 A witness statement was read by the Respondent’s representative on behalf of the witness (EE1 Tab 15 refers).

3.2 Mr Niles informed the Tribunal that the Applicant had grown in competence in his work during 2014 and 2015 such that the Respondent felt confident enough to purchase a small van for his use on Company business. This allowed the Applicant to undertake allocated jobs without the need to be driven from site to site. Mr Niles instructed the Applicant to take care of the vehicle and not to speed.

3.3 The witness stated that the first driving suspension had an impact on the Applicant’s ability to work independently and the ‘First Official Warning’ was issued to the Applicant to stress how seriously the Respondent took the driving ban. The letter stated that a further repetition of this offence would result in the Company reviewing the Applicant’s position in the Company.

3.4 Mr Niles told the Tribunal that he was very disappointed when the Applicant informed him on 26 December he had been charged for a second speeding offence. He told the Applicant in the event of a second conviction and subsequent driving ban that the Applicant had three options:

- The Applicant to pay for his own driver as and when required
- The Applicant to take unpaid leave
- The Company hires a driver at the Applicant’s personal cost

3.5 The Applicant resumed work on 4 January 2016 and despite several prompts the Applicant did not offer any solutions to deal with a potential second driving ban.

3.6 Once it was known that a further two-month driving ban had been imposed Mr Niles believed he had little choice but to dismiss the Applicant. He thought that the Company had looked at all reasonable ways of keeping the Applicant employed during a driving ban but given a heavy workload it was not felt possible to accommodate the Applicant's consequent transportation needs.

4.0 Mr Damien Jones

4.1 Mr Jones read from a witness statement (EE1 Tab 12 refers).

4.2 He agreed that he had received both the initial oral warning on 3 December 2014 relating to unauthorised/excessive use of his mobile phone while attending college classes and the subsequent warnings on 18 September 2015/4 January 2016 relating to him speeding in his personal car. The speeding offences did not occur during his working hours or with a Company vehicle.

4.3 The Applicant was not given any opportunity to appeal the warnings and he was not informed that he had the right to appeal.

4.4 During his phone call with Mr Jason Niles on 26 December 2016 he agreed he was given the three options as detailed in Mr Niles' evidence. He said he was informed that these options would be offered in writing and that he would not be dismissed.

4.5 The Applicant was given the 'Final Official Warning' during a meeting with Mr John Niles and Mr Jason Niles on 4 January. He thought that this meeting was conducted in an oppressive manner and that he had little choice but to sign the warning letter. No appeal was offered to this warning.

4.6 Mr Jones informed the Tribunal that he consulted friends and family who might drive him back and forth to client sites. They were as follows:

- His retired Grandfather
- His Mother
- A Neighbour
- His Uncle

He was confident that these individuals could provide transport for the limited number of days per month where he would be required to drive the Company vehicle. He informed the Tribunal that the requirement to drive was limited to two or three workdays per month.

4.7 Under cross-examination he stated that he had not communicated these options to his employer during the period 4 January 2016 to 13 January. He told the Tribunal that he was waiting for Mr Jason Niles to detail his options in writing.

4.8 At the point of his dismissal he did not inform the Respondent of the potential drivers available to him as he thought the decision to dismiss was final and any arguments from him could not succeed.

4.9 He was not offered any right of appeal at the time of his dismissal.

5.0 Ms Lauren Jade Knight by witness statement

5.1 Ms Knight is a friend of the Applicant and had also met Mr Jason Niles on a number of occasions.

5.2 On or around 18/19 December 2015 Ms Knight overheard a conversation of Mr Niles during which he confirmed he was aware of the second speeding offence and that the Company would “have to get rid of him”. Ms Knight also overheard Mr Niles state that he already had a qualified replacement to take the Applicant’s place.

6.0 Mr Bradlee Stephen Garnham

6.1 Mr Garnham is a friend of the Applicant and met Mr Jason Niles at a leisure centre in December 2015.

6.2 In his witness statement Mr Garnham stated the following:

“I don’t remember much about the conversation because I was in and out of it, I wasn’t paying full attention. I do remember Jason was not saying nice things about Damien and I definitely heard him say that he was looking for someone else to replace him because he wasn’t good at his job”. (EE1 Tab 14 refers).

7.0 Conclusion

7.1 The Applicant argued that his original contract made no mention of him being required to drive. It was noted by the Tribunal that at the date of the Applicant’s original contract he would have been too young to drive. Given the acquisition of a van and the Applicant’s subsequent use of the van it is evident that an oral change had been made to his contractual terms. The Respondent had purchased a van specifically for the Applicant’s use and this would indicate that the need for him to visit client premises independently was a real requirement of his job.

- 7.2 The Applicant was only required to use this van a few times a month but it was apparent that it was a continuing requirement of the role that he should hold a valid driving licence. An employer may form the reasonable view that a repetition of the driving licence suspension was a significant disadvantage, particularly given the very small size of the enterprise.
- 7.3 The warning issued on 18 September 2015 expressed with clarity that a further repeat of such a driving offence might result in the Applicant's contractual position being reviewed. Given such a letter the recipient should have been in no doubt of the employer's concerns. However, within three months Mr Jones is again found to have been speeding; these could not be construed as the actions of a conscientious individual mindful of the potential effect this might have on his employment.
- 7.4 Mr Jason Niles spoke with the Applicant on 26 December 2015 and, anticipating a future conviction, itemised three options that might ensure the continuing employment of the Respondent, even if he was taken off the road again. This seemed to be the action of a reasonable employer, not one who is seeking to end the Applicant's employment in the near term.
- 7.5 The Applicant argued that comments by Jason Niles, overheard by friends and colleagues of the Applicant at a leisure centre in December 2015, were illustrative of a prior decision to dismiss him. These conversations were held in a social setting, did not involve the witnesses directly and are therefore limited in weight and not persuasive, whereas the Tribunal concluded that the options suggested to the Applicant by Jason Niles on 26 December were made in good faith.
- 7.6 On 4 January 2016 the Applicant was given the 'Final Official Warning'. It should have left the Applicant in little doubt that if he was subject to a further driving ban his continuing employment was in jeopardy. He told the Tribunal that he had had a potential solution with a neighbour and family members and yet he failed to inform his employer.
- 7.7 The Applicant stated that he did not inform his employer of his potential resolution to the anticipated suspension of his driving licence as he had not received a written communication from his employer requesting him to provide this information. With his employment clearly in jeopardy the Applicant could have simply volunteered this information to the employer without a written request; his failure to do, in spite of prompts from the employer, left the Respondent with little room for flexibility.
- 7.8 The Tribunal concluded that once a second driving ban had been imposed it was within the reasonable range of responses by a reasonable employer for the Respondent to dismiss the Applicant.

7.9 The Tribunal does have a concern that no appeal against the decision to dismiss was given to the Applicant. However the Tribunal has taken into account the carefully worded warnings that should have left the Applicant in little doubt as to how the Respondent might act in the case of a second offence. The Tribunal also noted that only three months separated the first and second offences, suggesting the Applicant apparently took little heed of his employer's warning on 18 September 2015. Finally the Tribunal took account of the very small size of the enterprise.

Section 6.3 of the Law states: -

"Where the employer has fulfilled the requirements of subsection (1), then subject to the provisions of section 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 the question shall be determined in accordance with equity and the substantial merits of the case".

In these circumstances the Tribunal does not find the lack of an appeal process to be a prime determinant in its findings.

8.0 Decision

8.1 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 not unfairly dismissed. The Tribunal therefore makes no award.

Mr Peter Woodward
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Signature of the Chairman

1 August 2016
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Date